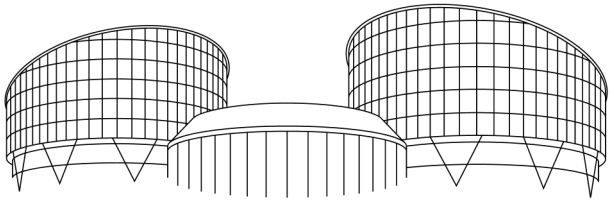

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF TITOVI v. BULGARIA

(Application no. 3475/03)

JUDGMENT

STRASBOURG

25 June 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 Titovi v. Bulgaria,

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 2 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 3475/03) 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 two Bulgarian nationals, Mrs Venka Titova and Mr Petko Titov ("the applicants"), on 16 January 2003.

2. The applicants were represented by Mr M. Ekimdjiev and Mrs S. Stefanova, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Mrs S. Atanasova of the Ministry of Justice.

3. On 20 September 2007 the President of the Fifth Section decided to give notice to the Government of the complaints regarding the conditions and the length of the second applicant's detention. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. The parties exchanged observations on the admissibility and merits of the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1968 and 1964 respectively and live in Plovdiv. The first applicant is the wife of the second applicant.

1. Criminal proceedings against, and detention of, the second applicant

6. On 9 October 2002 the police seized from the applicants' home tax labels and bank notes worth approximately 10,000 euros (EUR). An expert opinion established that the labels and the bank notes were counterfeit.

7. Subsequently, devices for the production of false identity papers were also found in the applicants' flat.

8. On 9 October 2002 the second applicant was arrested and taken into police custody. On 11 October a prosecutor ordered his 72-hour detention with a view to bringing him before a court.

9. On 11 October 2002 the second applicant was charged on two counts: firstly that he had, in complicity with others, counterfeited state securities, and secondly that he had had counterfeit securities and counterfeit bank notes in his possession.

10. On 14 October 2002 the second applicant was brought before the Plovdiv District Court, which remanded him in custody, finding that there was a reasonable suspicion that he had committed criminal offences and a risk of him re-offending. Upon appeal, on 22 October 2002 the Plovdiv Regional Court upheld the District Court's decision.

11. During his detention, the second applicant, who did not have a criminal record, lodged four requests for release. The first two were dismissed in court decisions of 21 January and 29 April 2003. The courts found that the reasonable suspicion that he had committed the offences in question persisted and that the charges were factually and legally complex. Furthermore, they found that there was a risk of him reoffending or absconding because he had apparently been part of an organised criminal group and also since he had been found in possession of a large quantity of counterfeit bank notes and of materials for the production of false identity papers.

12. The courts dismissed the second applicant's arguments that he needed to support his family financially and that the first applicant was seriously ill, pointing out that he had not adduced evidence about his family's financial situation and that the Code of Criminal Procedure provided for public care for the children of detained persons, and also that the first applicant had received adequate treatment and her illness did not warrant his release. The courts also found that the length of the second applicant's detention was not unreasonable because domestic law provided for a one-year limit on the duration of pre-trial detention in cases like his, which had not been exceeded.

13. In May 2003 the prosecution dropped the charge against the second applicant of having counterfeited state securities acting in complicity with others. The proceedings continued only with respect to the charge of possession of counterfeit items, an offence carrying a potential sentence of up to eight years' imprisonment.

14. The second applicant's third and fourth requests for release were dismissed on 29 July and 10 October 2003.

15. The courts affirmed that there was still a reasonable suspicion that he had committed the offence he had been charged with. They acknowledged that there was no risk of him absconding but found that he might reoffend as he was charged with a "serious" offence and had apparently been part of an organised criminal group. The courts found again that the length of his detention was not unreasonable because the one-year time-limit provided for in domestic law had not been exceeded.

16. On 14 October 2003 the second applicant was released on bail by order of the prosecution.

17. The investigation against him continued until February 2004 when he and four alleged accomplices were indicted. The course of the proceedings after that is unknown. During the investigation the prosecution authorities questioned numerous witnesses, commissioned expert opinions and collected evidence.

2. Conditions of the second applicant's detention and correspondence between the two applicants

18. Between 9 October 2002 and 14 October 2003 the second applicant was kept in a cell at the Regional Investigation Service in Plovdiv where the living conditions were poor and the food provided was allegedly inadequate.

19. The two applicants corresponded actively following the second applicant's arrest. The second applicant corresponded also with his children, his mother and a close friend of his.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The relevant domestic law and practice in respect of State liability for damage arising out of inadequate conditions of detention have been summarised in the Court's decision in the case of *Hristov v. Bulgaria* (dec.), no. 36794/03, 18 March 2008.

THE LAW

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

21. The second applicant complained under Article 5 § 3 of the Convention that his pre-trial detention had been unreasonably lengthy. Article 5 § 3, in so far as relevant, reads:

> "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."

22. The Government did not submit observations on this complaint.

A. Admissibility

23. The Court notes that the 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

24. The Court notes that the period of detention to be taken into consideration started with the second applicant's arrest on 9 October 2002 and ended with his release on 14 October 2003. It thus lasted one year and five days.

25. The Court recalls that the persistence of a reasonable suspicion that the person deprived of his liberty under Article 5 § 1(c) of the Convention has committed an offence is a condition *sine qua non* for the lawfulness of the continued deprivation of liberty, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the judicial authorities gave other "relevant" and "sufficient" grounds to justify the deprivation of liberty (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

26. It is not disputed between the parties that a reasonable suspicion that the second applicant had committed an offence persisted throughout his detention. The Court must therefore establish whether the domestic courts gave other "relevant" and "sufficient" grounds to justify his continued deprivation of liberty.

27. The Court considers that during the first months of the second applicant's detention the authorities' finding that there existed a risk of him reoffending was based on relevant evidence and did not appear arbitrary or unreasonable. In particular, the second applicant had been charged with participation in an organised criminal group for the production of counterfeit items and had been found in possession of counterfeit bank notes and devices for the production of false identity documents (see paragraphs 6-12 above).

28. The Court notes, however, that the domestic courts refused to reassess the situation after May 2003, when the above charge was dropped, and merely repeated the statement that the second applicant's alleged participation in a criminal group indicated that he might reoffend. In the Court's view, this reasoning was deficient in that the domestic courts failed

to explain why their assessment had not been affected by the fact that the charge concerning participation in a criminal group had been dropped. The Court also notes that although the remaining offence the second applicant stood accused of – possession of counterfeit items – was classified as "serious" under domestic law, it is significant that it was a non-violent offence and the second applicant did not have a criminal record (see paragraphs 11 and 13-15 above).

29. Furthermore, it is apparent from the reasons given by the domestic courts and, in particular, their refusal to release the applicant on 10 October 2003, just four days before the expiry of the applicable one-year statutory maximum period of pre-trial detention, that the authorities considered his detention as automatically justified until the expiry of that period (see paragraphs 14-16 above). For the Court this approach is unacceptable. It has held that justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)). Moreover, under Article 5 § 3 of the Convention it is for the national authorities to ensure that, in a given case, the pre-trial detention of an accused person is justified on the basis of relevant and sufficient reasons and does not exceed a reasonable period (see *Labita v. Italy*, cited above, § 152).

30. Therefore, the Court finds that after May 2003 the authorities failed to provide "relevant" and "sufficient" grounds to justify the second applicant's continued detention.

31. In view of this, the Court concludes that there has been a violation of the second applicant's right under Article 5 § 3 of the Convention to a trial within a reasonable time or release pending trial.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The second applicant also complained under Article 3 of the Convention about the living conditions in the cell of the Regional Investigation Service in Plovdiv. Article 3 reads:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

33. The Government argued that the second applicant had failed to exhaust domestic remedies as he had not sought damages under the State Responsibility for Damage Act. The applicant expressed doubts as to the effectiveness of this remedy.

34. The Court accepts the Government's argument. It recalls that in its recent decision in the case of *Hristov v. Bulgaria*, cited above, it found that in respect of conditions of detention an action under the State Responsibility for Damage Act represented, in principle, a remedy which needed to be exhausted. The second applicant has not brought such an action and the

Court is not convinced that his doubts concerning the effectiveness of this existing remedy dispense him from the need to employ it.

35. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

III. THE REMAINDER OF THE APPLICANTS' COMPLAINTS

36. The second applicant also complained under Articles 5 §§ 1 and 3 of the Convention that his detention from 9 to 14 October 2003 had been unlawful and that in examining his requests for release the domestic courts had failed to carry out a full judicial review. The two applicants complained under Article 8 of the Convention that their letters could potentially have been opened and read by the administration of the Regional Investigation Office in Plovdiv and under Article 13 that they did not have an effective remedy in that respect.

37. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of were within its competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The second applicant did not make a claim for pecuniary damage. In respect of non-pecuniary damage arising out of his lengthy deprivation of liberty, he claimed EUR 6,000.

40. The Government considered the claim excessive.

41. The Court considers that the second applicant must have sustained non-pecuniary damage as a result of the breach of his right under Article 5 § 3 of the Convention to a trial within a reasonable time or release pending trial. Taking into account all circumstances of the case, the Court awards him EUR 1,500.

B. Costs and expenses

42. The second applicant claimed EUR 3,220 for forty-six hours of legal work by his lawyers, at the hourly rate of EUR 70. In support of this claim he submitted a time-sheet. He also claimed EUR 174 for postage and translation. He requested that any sums awarded for costs and expenses be transferred directly into the accounts of his lawyers, Mr M. Ekimdjiev and Mrs S. Stefanova.

43. The Government considered that the claims were excessive.

44. 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.

45. In the present case, regard being had to the information in its possession and the above criteria, including the fact that most of the applicants' complaints were rejected, and also noting that the applicants did not provide any invoices in respect of the expenses for translation, the Court finds it reasonable to award EUR 800 covering costs under all heads, to be transferred directly into the bank accounts of the applicants' lawyers, Mr M. Ekimdjiev and Mrs S. Stefanova.

C. Default interest

46. 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 second applicant's complaint about the length and justification of his pre-trial detention admissible and the remaining complaints of the first and second applicants inadmissible;

2. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the length of, and lack of sufficient justification for, the second applicant's pre-trial detention;

3. *Holds*
   (a) that the respondent State is to pay the second applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following

amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 800 (eight hundred euros), plus any tax that may be chargeable to the second applicant, in respect of costs and expenses, to be paid directly into the accounts of the applicants' legal representatives;

(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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 25 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President