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

FIFTH SECTION

CASE OF TSONYO TSONEV v. BULGARIA (No. 2)

(Application no. 2376/03)

JUDGMENT

STRASBOURG

14 January 2010

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 Tsonyo Tsonev v. Bulgaria (no. 2),

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 8 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 2376/03) 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 a Bulgarian national, Mr Tsonyo Ivanov Tsonev ("the applicant"), on 17 December 2002.

2. The applicant was not legally represented. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged that the criminal proceedings against him had been unfair, in particular on account of the ineffective assistance of counsel, and that he had been tried and punished again for the same offence for which he had already been fined in administrative proceedings.

4. On 27 September 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Gabrovo. At the relevant time he was unemployed.

6. At about 9 p.m. on 11 November 1999 the applicant and Mr D.M., after having consumed alcohol, went to the flat of Mr G.I., apparently with the intention of recovering certain items which Mr D.M.'s former girlfriend had left there. A violent incident ensued and the police, who were called by neighbours, arrested the applicant and Mr D.M.

7. On 12 November 1999 a police officer drew up a report describing the applicant's conduct on the previous evening. On the basis of this report, in a decision of 19 November 1999 the mayor of Gabrovo found the applicant guilty of breaching section 2(1) of municipal by-law no. 3 (see paragraph 25 below) and fined him 50 Bulgarian levs (BGN). The mayor explained that, while drunk, the applicant had broken down the door of Mr G.I.'s flat and had beaten him up. These actions had constituted a breach of public order and an expression of manifest disregard towards society, contrary to the above-mentioned provision. The decision, which specified that it was subject to judicial review within seven days after being served on the offender, was not served on the applicant, whose address was unknown. It was put in the file and considered as constructively served under section 58(2) of the 1969 Administrative Offences and Penalties Act (see paragraph 28 below). The applicant did not learn about it within the time-limit for seeking judicial review and the decision became final.

8. Some time later the prosecution authorities charged the applicant with inflicting "intermediate" bodily harm on Mr G.I., contrary to Article 129 § 1 of the 1968 Criminal Code, and breaking into his home, contrary to Article 170 § 2 of that Code (see paragraphs 18 and 19 below). They alleged that he had acted in concert with Mr D.M.

9. The applicant's trial took place before the Gabrovo District Court between 9.30 a.m. and 12.40 p.m. on 1 December 2000 and between 1.30 p.m. and 4 p.m. on 14 November 2001. He was represented by two lawyers. It is unclear whether they were retained by him or appointed by the court. The court heard the two co-accused, three experts and five witnesses. It admitted numerous documents in evidence and heard the parties' closing argument.

10. In a judgment of 14 November 2001 the Gabrovo District Court found the applicant guilty of inflicting "intermediate" bodily harm on Mr G.I. It found him not guilty of committing this offence in concert with others and not guilty of entering another's home by force. It sentenced him to eighteen months' imprisonment. The court found that Mr D.M. alone had broken down the door of Mr G.I.'s flat and that the applicant had entered the flat after him. The court further found that in the ensuing scuffle the applicant had broken two of Mr G.I.'s teeth, which amounted to "intermediate" bodily harm, but at the same time held that in committing this act the applicant had not acted in concert with Mr D.M., because the latter had not hit Mr G.I. in the head.

11. The applicant appealed to the Gabrovo Regional Court. He drafted the appeal himself. Mr D.M. did not appeal.

12. The Gabrovo Regional Court held a hearing on the morning of 2 April 2002. The counsel previously appointed by the court for the applicant did not show up and new counsel was thus appointed. The applicant said that the new counsel was acquainted with his arguments and the case, and that he agreed to be defended by her. The record of the hearing says that the newly appointed counsel took half an hour to acquaint herself with the file; according to the applicant, she only had ten minutes to do so, because, as shown by the record, the hearing started at 10 a.m. and finished at 10.10 a.m.

13. In her closing speech, counsel for the applicant argued that it was not certain whether he had hit Mr G.I. in the head. Even if that had been so, he had done so in self-defence, because Mr G.I. had tried to shoot him with a gas pistol and he had panicked. It was furthermore unclear whether the blows allegedly administered by the applicant could result in the type of injuries sustained by Mr G.I. The experts' statements on this point had not been properly recorded. Counsel later filed a memorial previously drawn up by the applicant.

14. In a judgment of 9 April 2002 the Gabrovo Regional Court upheld the lower court's judgment. It found that it had assessed the evidence properly and had established the facts correctly, and went on to say that there was no indication that the applicant had acted in self-defence.

15. On 23 April 2002 the applicant appealed on points of law, again drafting the appeal himself. On 26 August 2002 he asked the Supreme Court of Cassation to appoint counsel for him. He relied on Article 70 § 1 (7) of the 1974 Code of Criminal Procedure (see paragraph 20 below) and asserted that he had no legal knowledge and could not afford to retain counsel, whereas the interests of justice required that he be legally represented because he risked imprisonment.

16. In a letter of 9 September 2002 the president of the Second Criminal Division of the Supreme Court of Cassation advised the applicant that it was not possible to appoint counsel for him, as the prerequisites of Article 70 of the 1974 Code of Criminal Procedure were not met.

17. The Supreme Court of Cassation held a hearing on 14 October 2002. The applicant acted *pro se*. The prosecution argued that his appeal should be dismissed. On 22 October 2002 the Supreme Court of Cassation, which had the power to quash, vary or reverse the lower court's judgment, decided to uphold it. It found that the lower court had properly established the facts, had fully examined all relevant issues, and had not breached the rules of procedure.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The 1968 Criminal Code

18. Article 129 § 1 of the 1968 Criminal Code makes it an offence to inflict "intermediate" bodily harm on another. Article 129 § 2 defines "intermediate" bodily harm as, among other things, the knocking out of teeth whose loss makes chewing or speaking more difficult.

19. By Article 170 § 1 of the Code, it is an offence to enter another person's home using force, threats, dexterity, abuse of power, or special technical devices. Article 170 § 2 provides that the offence is aggravated if it has been committed at night or by an armed individual.

B. The 1974 Code of Criminal Procedure

1. Court-appointed counsel

20. Points (1) to (6) of Article 70 § 1 of the 1974 Code of Criminal Procedure listed situations in which the appointment of counsel for the accused was mandatory: (i) the accused was a minor; (ii) the accused suffered from a disability preventing him or her from defending himself or herself in person; (iii) the accused was charged with an offence punishable by more than ten years' imprisonment; (iv) the accused did not speak Bulgarian; (v) another accused who had diverging interests had already retained counsel; or (vi) the case was heard in the absence of the accused. On 1 January 2000 a new point (7) was added. It was part of a comprehensive overhaul of the Code intended to bring it in line with the Convention, based on Article 6 § 3 (c), and it provided that the appointment of counsel was compulsory if the accused could not afford it but wished to be legally represented and the interests of justice so required.

21. On 29 April 2006 the 1974 Code was superseded by the 2005 Code of Criminal Procedure. The text of its Article 94 § 1 (9) matches exactly that of Article 70 § 1 (7) of the 1974 Code. Article 94 § 1 (7) provides that the participation of counsel in the proceedings before the Supreme Court of Cassation is compulsory. Where the participation of counsel is compulsory, the competent authority has to appoint counsel when not retained by the accused (Article 94 §§ 2 and 3).

2. Adjournment of a hearing in the event of counsel's failure to appear

22. Article 269 § 2 (3) of the 1974 Code provided that a hearing had to be adjourned if counsel for the accused failed to appear and if such counsel could not be replaced without causing prejudice to the accused's defence.

23. In 1997 the text was amended, providing that an adjournment was only necessary where the case could not proceed without the accused being legally represented. In a decision of 14 April 1998 (решение № 9 от 14 април 1998 г. по к. д. № 6 от 1998 г. обн., ДВ, бр. 45 от 21 април 1998 г.) the Constitutional Court declared the amendment unconstitutional, finding that it made it possible to hold hearings in which the accused would not be legally represented and that this would certainly prejudice the defence. It was true that certain limitations on the rights of the defence were permissible under the Constitution in the interest of the proper administration of justice. However, this particular limitation was disproportionate, because it made it harder to ascertain the truth and put the accused at a disadvantage *vis-à-vis* the prosecution, in breach of the principle of equality of arms.

3. Bars to the institution of criminal proceedings

24. Article 21 § 1 (6) of the 1974 Code (whose text has been copied almost verbatim into Article 24 § 1 (6) of the 2005 Code) provided that criminal proceedings could not be opened or had to be discontinued if in respect of the same person and in respect of the same offence there existed a final judgment or decision. The former Supreme Court – in a binding interpretative decision –, and later the Supreme Court of Cassation, have construed this provision as not barring the opening of criminal proceedings in respect of persons who have already been punished in administrative proceedings (тълк. реш. № 85 от 1 ноември 1966 г. по н. д. № 79/1960 г., ОСНК на ВС; реш. № 348 от 29 май 1998 г. по н. д. № 180/1998 г., ВКС, II н. о.; и реш. № 564 от 9 декември 2008 г. по н. д. № 626/2008 г., ВКС, I н. о.).

C. By-law no. 3 for safeguarding public order on the territory of the municipality of Gabrovo

25. By-law no. 3 for safeguarding public order on the territory of the municipality of Gabrovo (Наредба № 3 за опазване на обществения ред на територията на габровската община, приета с решение № 50, протокол № 10 от 26 март 1992 г.) was adopted by the Gabrovo Municipal Council on 26 March 1992 pursuant to section 22(1) of the 1991 Local Self-Government and Local Administration Act, which, as worded at the material time, empowered municipal councils to make by-laws concerning local issues. Section 2(1) of the by-law provided that citizens were prohibited from committing acts which breached public order and expressed manifest disregard towards society. Section 27(1) provided that violations of the by-law were punishable with a fine of up to BGN 50. Under section 30 of the by-law, the procedure for establishing such violations and

their punishment was governed by the 1969 Administrative Offences and Penalties Act.

D. The 1969 Administrative Offences and Penalties Act

26. Section 2(3) of the 1969 Administrative Offences and Penalties Act provides that municipal councils may, in issuing by-laws, determine the elements of administrative offences and provide for penalties among those envisaged by the Local Self-Government and Local Administration Act of 1991. Under section 22(2) of that Act, as in force at the material time, the breach of a municipal by-law was punishable with a fine of up to 500 Bulgarian levs.

27. The 1969 Act governs administrative offences and penalties and lays down the procedure for punishing such offences. It defines them, in section 6, as acts or omissions which run counter to the established order, have been committed wilfully and are punishable with administrative penalties. Section 11 provides that, absent specific provisions in the Act, the 1968 Criminal Code governs all questions concerning *mens rea*, capacity, exculpating circumstances, complicity, preparation and attempts.

28. Under section 58(1), a decision imposing an administrative penalty must be served on the offender. If, however, the offender cannot be found at the address he specified and his new address is unknown, a note to this effect is made on the decision and it is considered as served on the date of the note (section 58(2)). The decision may be challenged by way of judicial review (section 59(1)) within seven days after it has been served (section 59(2)). Under section 64, decisions imposing administrative penalties become final when (i) they are not subject to review, (ii) have not been challenged within the statutory time-limit, or (iii) have been challenged but have been upheld or varied by the competent court.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

29. The applicant raised several complaints under Article 6 of the Convention in relation to the criminal proceedings against him. He firstly alleged that the Gabrovo Regional Court had appointed counsel for him with such short notice before the hearing that she had been unable to defend him effectively. He secondly complained that the Supreme Court of Cassation had refused to appoint counsel for him. Lastly, he alleged that the

courts which had examined his case had erred in assessing the evidence and in establishing the facts.

30. The Court considers that these complaints fall to be examined under Article 6 of the Convention, which, in as far as relevant, provides:

> "1. In the determination ... of any criminal charge against him, everyone is entitled to a fair ... hearing...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require[.]"

31. The Government did not submit observations, but stated that the application was inadmissible and manifestly ill-founded.

32. The applicant submitted that the Supreme Court of Cassation's refusal to appoint counsel for him had amounted to a breach of Article 6 § 3 (c) of the Convention and Article 70 of the 1974 Code of Criminal Procedure. This was further shown by the fact that under Article 94 of the 2005 Code of Criminal Procedure the participation of counsel was compulsory for cases heard by the Supreme Court of Cassation.

A. Admissibility

33. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The late appointment of counsel in the proceedings before the Gabrovo Regional Court

34. It is clear that the Gabrovo Regional Court had appointed counsel for the applicant in good time before the hearing, and that the failure of that counsel to appear made it necessary to appoint a new one on the day of the hearing (see paragraph 12 above). The point in issue is whether and to what extent this situation impacted negatively on the fairness of the proceedings against the applicant, because the rights of those charged with a criminal offence to adequate time and facilities for the preparation of their defence and to effective legal assistance are elements, among others, of the concept

of a fair trial (see *Goddi v. Italy*, 9 April 1984, § 28, Series A no. 76; *Twalib v. Greece*, 9 June 1998, § 46, *Reports of Judgments and Decisions* 1998-IV; *Mattick v. Germany* (dec.), no. 62116/00, ECHR 2005-VII; and *Padalov v. Bulgaria*, no. 54784/00, § 41, 10 August 2006).

35. However, the Court does not consider it necessary to pursue that point. It observes that the applicant explicitly stated that the new counsel was acquainted with the case and his arguments and that he agreed to be defended by her. It also notes that neither the applicant nor his counsel sought an adjournment in order for the counsel to be able to prepare more thoroughly for the hearing (see paragraph 12 above). The Court must therefore determine, in the first place, whether the applicant waived the rights described in the preceding paragraph.

36. Neither the letter nor the spirit of Article 6 prevent a person from waiving the guarantees of a fair trial, but such waiver must be established in an unequivocal manner, be attended by minimum safeguards commensurate with its importance, and not run counter to any important public interest (see *Hermi v. Italy* [GC], no. 18114/02, § 73, ECHR 2006-XII). The Court finds no reason of public policy to prevent accused persons from waiving their right to additional time for the preparation of their defence. This is because the question of time depends primarily on the assessment of the persons concerned; different counsel need different amounts of time to prepare for a case. In the instant case, instead of seeking an adjournment, as possible (see paragraphs 22 and 23 above), the applicant explicitly stated that his new counsel was familiar with his case and that he agreed to be defended by her (see paragraph 12 above). There is no indication that this declaration was tainted by constraint. Thus, it was the applicant's choice to proceed with the case, and the Gabrovo Regional Court cannot be criticised for not giving his counsel more time to prepare. While the authorities responsible for appointing counsel have to ensure that they are capable of effectively defending the accused (see *Mills v. the United Kingdom* (dec.), no. 35685/97, 5 December 2000), national judges must also strike a balance between the need to ensure that the accused have enough time to prepare and the need to ensure that a trial progresses in a reasonably expeditious way (see *Naviede v. the United Kingdom* (dec.), no. 38072/97, 7 September 1999). In this connection, it cannot be overlooked that in her closing speech the applicant's counsel was able to raise a number of arguments in his defence (see paragraph 13 above), which serves to confirm the applicant's statement that she was familiar with his case.

37. There has therefore been no violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention.

2. The Supreme Court of Cassation's refusal to appoint counsel for the applicant

38. The right of those charged with criminal offences to free legal assistance is also an element, among others, of the concept of a fair trial in criminal proceedings. It is subject to two conditions: the persons concerned must lack sufficient means to pay for legal assistance, and the interests of justice must require that they be granted such assistance (see, among other authorities, *Pham Hoang v. France*, 25 September 1992, § 39, Series A no. 243).

39. The Court notes the difficulties in assessing at this stage whether the applicant lacked sufficient means to pay for legal assistance in connection with his representation before the Supreme Court of Cassation. There are, however, indications which suggest that this was so. First, counsel had been appointed for him in the proceedings before the lower court (see paragraph 12 above), in all probability under the new point 7 of Article 70 § 1 of the 1974 Code of Criminal Procedure, because at that juncture, in the absence of an appeal by his co-accused (see paragraph 11 above), none of the other hypotheses where counsel was mandatory were present (see paragraph 20 above). Second, the applicant expressly asserted that he could not afford to retain counsel (see paragraph 15 above), whereas in rejecting his request the Supreme Court of Cassation did not address this assertion, confining its reasoning to the general statement that the prerequisites of the above-mentioned Article 70 were not met (see paragraph 16 above and contrast *Caresana v. the United Kingdom* (dec.), no. 31541/96, 29 August 2000). In the light of these facts and in view of the absence of clear indications to the contrary, the Court is satisfied that the applicant lacked sufficient means to pay for his legal representation in the cassation proceedings (see, *mutatis mutandis*, *Twalib*, cited above, § 51).

40. As to whether the interests of justice required that the applicant receive free legal assistance, the Court observes that in the lower courts he was found guilty and sentenced to eighteen months imprisonment (see paragraphs 10 and 14 above). Given that where deprivation of liberty is at stake, those interests in principle call for such assistance (see *Benham v. the United Kingdom*, 10 June 1996, § 61, *Reports* 1996-III, and, more recently, *Shabelnik v. Ukraine*, no. 16404/03, § 58, 19 February 2009), there can be little doubt that they required that it be granted to the applicant for the purposes of his appeal on points of law. An additional factor was the complexity of the cassation procedure (see *Pham Hoang*, § 40 *in fine*, and *Twalib*, § 53, both cited above); indeed, at present Article 94 § 1 (7) of the 2005 Code of Criminal Procedure requires the participation of counsel in the proceedings before the Supreme Court of Cassation in all cases (see paragraph 21 above). Lastly, it cannot be overlooked that a qualified lawyer would have been able to clarify the grounds adduced by the applicant in his appeal and effectively counter the pleadings of the public prosecutor at the

hearing (see *Artico v. Italy*, 13 May 1980, § 34 *in fine*, Series A no. 37, and *Pakelli v. Germany*, 25 April 1983, §§ 37-39, Series A no. 64), thus ensuring respect for the principle of equality of arms.

41. In view of the foregoing, the Court concludes that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention.

3. The manner in which the courts assessed the evidence and established the facts

42. The Court observes that it is not its function to deal with errors of fact or law allegedly committed by the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I), as it is not a court of appeal from these courts (see, among many other authorities, *Cornelis v. the Netherlands* (dec.), no. 994/03, ECHR 2004-V (extracts)). However, in view of its conclusion in paragraph 41 above, it finds it unnecessary to examine this complaint (see *Seliverstov v. Russia*, no. 19692/02, § 25, 25 September 2008).

II. ALLEGED VIOLATION OF ARTICLE 4 OF PROTOCOL No. 7

43. The applicant complained that he had been tried and convicted for the offence for which he had already been fined by the mayor. He relied on Article 4 of Protocol No. 7 to the Convention, which, in so far as relevant, provides:

> "1. No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the same State for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State. ..."

44. The Government did not submit observations, but stated that the application was inadmissible and manifestly ill-founded.

45. The applicant said that he was convinced that he had been punished twice in respect of the same conduct, but left it to the Court to determine whether this amounted to a breach of the above provision.

A. Admissibility

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

B. Merits

1. Whether the first sanction was criminal in nature

47. On 19 November 1999 the applicant was fined in proceedings conducted under the 1969 Administrative Offences and Penalties Act and regarded as "administrative" rather than "criminal" under the domestic legal classification (see paragraphs 7 and 27 above). It must therefore be determined whether these proceedings concerned a "criminal" matter within the meaning of Article 4 of Protocol No. 7. The relevant principles for making this determination have recently been summarised in paragraphs 52 and 53 of the Court's judgment in the case of *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, ECHR 2009-...).

48. As in that case, the Court starts with the observation that the sphere labelled in some legal systems as "administrative" embraces certain offences which have a criminal connotation but are too trivial to be governed by criminal law and procedure (*ibid*., § 54, with further references).

49. It further notes that the offence of a breach of public order and an expression of manifest disregard towards society in section 2(1) of by-law no. 3 (see paragraphs 25-27 above) served to guarantee the protection of human dignity and public order, being values and interests which normally fall within the sphere of protection of the criminal law. It was directed towards all individuals rather than just a group having special status, and its primary aims were punishment and deterrence, which are recognised as characteristic features of criminal penalties (see *Lauko v. Slovakia*, 2 September 1998, § 58, *Reports* 1998-VI; *Kadubec v. Slovakia*, 2 September 1998, § 52, *Reports* 1998-VI; and *Sergey Zolotukhin*, cited above, § 55). The fact that it was not punishable by imprisonment is not decisive (see *Öztürk v. Germany*, 21 February 1984, §§ 53 and 54, Series A no. 73; *Lauko*, cited above, § 58; and *Kadubec*, cited above, § 52). The nature of the offence and the nature and degree of severity of the penalty are alternative and not cumulative criteria, it being sufficient that the offence in question is by its nature criminal from the point of view of the Convention (see *Lutz v. Germany*, 25 August 1987, § 55, Series A no. 123; *Kadubec*, cited above, § 52 *in fine*; and *Lauko*, cited above, § 56).

50. The nature of the offence for which the applicant was fined by the mayor was therefore such as to bring it within the ambit of the expression "penal procedure" used in Article 4 of Protocol No. 7.

2. Whether the offences for which the applicant was fined and then prosecuted were the same

51. The relevant test has recently been clarified in paragraphs 78 to 84 of the Court's judgment in the case of *Sergey Zolotukhin* (cited above). Under

this test, the Court must disregard the legal characterisation of the offences in domestic law and take their facts as its sole point of comparison.

52. In the present case, the facts that gave rise to the administrative fine imposed on the applicant related to a breach of public order constituted by his breaking down the door of Mr G.I.'s flat and beating him up (see paragraph 7 above). The same facts formed the central element of the charges under Article 129 § 1 and Article 170 § 2 of the 1968 Criminal Code, according to which the applicant had inflicted "intermediate" bodily harm on Mr G.I. and broken into his home (see paragraphs 8, 18 and 19 above). The criminal charges therefore embraced the facts of the administrative offence in its entirety and, conversely, the administrative offence did not contain any elements that were not present in the criminal offences with which the applicant was charged. The facts of the two offences must therefore be regarded as substantially the same for the purposes of Article 4 of Protocol No. 7.

3. Whether there was a duplication of proceedings

53. The aim of Article 4 of Protocol No. 7 is to prohibit the repetition of proceedings which have been concluded by a "final" decision. A decision is final for the purposes of this provision if it has acquired the force of *res judicata*. This is the case when it is irrevocable, that is to say when no further ordinary remedies are available, or when the parties have exhausted such remedies or have permitted the time-limit to expire without availing themselves of them (see *Sergey Zolotukhin*, cited above, §§ 107 and 108, with further references).

54. In the instant case, the fine imposed by the mayor was subject to judicial review within seven days. However, as the applicant's address was unknown, the mayor's decision was constructively served on him by being put in the file, with the result that the time-limit started running on 19 November 1999 and expired seven days later (see paragraphs 7 and 28 above). After its expiry this decision became final, and no further ordinary remedies were available to the applicant. The administrative "conviction" therefore became "final" for the purposes of Article 4 of Protocol No. 7 before the institution of the criminal proceedings against the applicant.

55. Since Article 4 of Protocol No. 7 applies even where an individual has merely been prosecuted in proceedings which have not resulted in a conviction (see *Sergey Zolotukhin*, cited above, § 110, with further references), the fact that the applicant was acquitted of the charge of entering another's home by force (see paragraph 10 above) has no bearing on his claim that he was prosecuted and tried on that charge for a second time. Nor did this acquittal deprive the applicant of his victim status, as it was not based on the fact that he had been fined for the same actions under by-law no. 3, but on the criminal court's assessment of the evidence and its findings of fact (ibid., §§ 112-16). Indeed, it was not open to the courts to

terminate the criminal proceedings against him on account of his earlier punishment in administrative proceedings, as, according to a binding interpretative decision of the former Supreme Court and the constant case-law of the Supreme Court of Cassation, the prohibition on repetition of proceedings does not apply to administrative proceedings (see paragraph 24 above and, *mutatis mutandis*, *Sergey Zolotukhin*, cited above, § 118).

4. Conclusion

56. The applicant was "convicted" in administrative proceedings which are to be assimilated to "criminal proceedings" within the autonomous Convention meaning of this term. After this "conviction" became final, criminal charges were laid against him which referred to the same conduct as that punished in the administrative proceedings and encompassed substantially the same facts. The criminal proceedings against the applicant thus concerned essentially the same offence as that of which he had already been "convicted" by a final decision of the mayor.

57. There has therefore been a violation of Article 4 of Protocol No. 7.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

60. The Government did not comment on the applicant's claim.

61. The Court is of the view that the applicant must be considered to have suffered some non-pecuniary damage as a result of the breach of his right to effective legal assistance and his right not to be tried or punished again for the same offence. Ruling on an equitable basis, as required under Article 41, it awards him EUR 3,000, plus any tax that may be chargeable on that amount.

B. Costs and expenses

62. The applicant sought the reimbursement of the expenses which he had incurred for the proceedings before the Court. He did not quantify them and did not submit any documents in support of his claim.

63. The Government did not comment on the applicant's claim.

64. According to the Court's case-law, applicants are entitled to the reimbursement of their 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. To this end, Rule 60 §§ 2 and 3 of the Rules of Court stipulate that applicants must enclose with their claims for just satisfaction "any relevant supporting documents", failing which the Court "may reject the claims in whole or in part". In the present case, noting that the applicant has failed to produce any documents in support of his claim, the Court does not make any award under this head.

C. Default interest

65. 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 application admissible;

2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention in the proceedings before the Gabrovo Regional Court;

3. *Holds* that there has been a violation of Article 6 §§ 1 and 3 (c) of the Convention on account of the failure to provide free legal assistance to the applicant in the proceedings before the Supreme Court of Cassation;

4. *Holds* that no examination of the applicant's further complaint under Article 6 of the Convention is required;

5. *Holds* that there has been a violation of Article 4 of Protocol No. 7 to the Convention;

6. *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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 14 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President