FIFTH SECTION

CASE OF TANKO TODOROV v. BULGARIA

(Application no. 51562/99)

JUDGMENT

STRASBOURG

9 November 2006

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Tanko Todorov v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 16 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 51562/99) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Tanko Zaprianov Todorov, a Bulgarian national who was born in 1976 and lives in the village of Chalakovi ("the applicant"), on 16 July 1999.

2. The applicant was represented by Ms E. Nedeva, a lawyer practising in Plovdiv.

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

4. The applicant alleged that his detention was excessively lengthy and unjustified. He also claimed that the courts did not examine all factors relevant to the lawfulness of his detention, that his appeal of 2 September 1999 was not decided speedily and that the Supreme Court of Cassation denied him the right to challenge the lawfulness of his detention before a court with its refusal of 24 September 2001 to initiate cassation proceedings.

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

6. The parties did not file further written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings

7. On the night of 2 December 1997 a customer of a bar was brutally beaten up after leaving with a friend to go home. The friend who accompanied him witnessed the start of the attack from a distance. The victim later died from his injuries.

8. A preliminary investigation into the murder was opened on the following day.

9. On 11 December 1997 the applicant, who had also been in the bar on the night in question, was arrested and questioned by the police. He signed a statement confessing to having beaten the victim, which he subsequently retracted claiming that it was extracted from him under duress.

10. On 12 December 1997 the applicant was charged with murder and detained on remand. Immediately thereafter, the applicant was questioned by an investigator. In the presence of a State-appointed attorney and after having been informed of his right not to give testimony the applicant reiterated the statement he had given on the previous day and made a full confession.

11. During the preliminary investigation various witnesses were questioned, DNA tests were performed on the applicant's clothes and a crime scene experiment was conducted. Various experts' opinions were also obtained, such as to assess the applicant's physical and mental state, as well as his eyesight. A medical examination of the victim was also conducted. In addition, an agronomical expertise was commissioned to determine what the foliage cover of the trees was at the time of the murder and whether that could have impaired the witness's line of sight. A meteorological expertise was also obtained to assess whether the weather could have had a similar hampering effect.

12. On an unspecified date, the Prosecutor's Office filed an indictment for murder against the applicant with the Plovdiv Regional Court.

13. Subsequently, the Plovdiv Regional Court remitted the case back to the investigation stage on at least two occasions.

14. Revised indictments were entered against the applicant on 13 January and 14 October 1999. The final indictment against the applicant was for murder with extreme viciousness. The prosecution claimed that the applicant had beaten up the victim after he had refused to lend him money to pay his bill in the bar.

15. The Plovdiv Regional Court conducted six hearings between 30 January and 3 December 2001.

16. In a judgment of 3 December 2001 the Plovdiv Regional Court, acting as the court of first instance, acquitted the applicant. According to the minutes, it then ordered his release, but imposed a restriction on him not to leave his place of residence without the permission of the Prosecutor's Office. The court considered that it was unclear whether the applicant's confession was given voluntarily. Assessing it in the light of the other evidence and witnesses' statements, the court found that the prosecution had failed to prove its case against the applicant.

17. The Prosecutor's Office appealed against the judgment on 18 December 2001.

18. It is unclear how many hearings were conducted before the Plovdiv Court of Appeals.

19. In a judgment of 20 September 2004 the Plovdiv Court of Appeals quashed the lower-court's judgment and examined the case on the merits. It found the applicant guilty of murder with extreme viciousness, sentenced him to seventeen years' imprisonment and ordered that he pay damages to the victim's family. In reaching its decision, the Plovdiv Court of Appeals found that the first-instance court had given too much weight to the applicant's assertions that his confession had been extracted under duress, which it considered to be unsubstantiated. In addition, it found the applicant's version of the events on the night of the murder to be in contradiction with the other evidence in the case and to be in conflict with his actions on the next day when he tried to hide the clothes he had worn on the previous night and, subsequently, when he presented the police with other garments for examination.

20. On an unspecified date the applicant filed a cassation appeal against the judgment.

21. It is unclear whether and when the applicant's appeal was examined by the Supreme Court of Cassation.

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

22. The applicant was arrested by the police on 11 December 1997 and questioned.

23. On the next day, 12 December 1997, he was detained on remand by order of an investigator, which was confirmed by the Prosecutor's Office later on the same day. The applicant was assisted by a State-appointed attorney. The grounds for detaining him on remand, as stated in the decision of the investigator, were that “there is a danger that the charged may abscond or re-offend”.

24. The applicant's detention was confirmed by a prosecutor on 11 May 1998 without citing any grounds.

25. At the latest, the trial stage of the criminal proceedings against the applicant began on 14 October 1999.

26. The applicant made several unsuccessful appeals against his detention. Information was provided only about some of them.

27. The applicant's appeals dating from 18 June, 2 September and some time at the beginning of November 1999 were dismissed by the Plovdiv Regional Court on 13 July, 15 September and 5 November 1999, respectively. Separately, an appeal dated 16 September 1999 was rejected on the next day by a judge-rapporteur of the Plovdiv Regional Court because he found that it had been filed only one day after the court had ruled on a previous appeal and considered that there was a lack of new circumstances justifying a new right of appeal.

28. In each of his appeals, the applicant petitioned for his release and argued that there was no risk that he would abscond, re-offend or obstruct the investigation, because he had a permanent address, had no prior criminal record, was the main breadwinner in the family, the financial and living conditions of his wife and children had worsened, the two-year maximum period of pre-trial detention under Section 152 § 4 of the Code of Criminal Procedure ("CCP") was being violated and, in any case, that there was insufficient evidence that he had perpetrated the offence.

29. In its decisions to dismiss the applicant's appeals the Plovdiv Regional Court found that there was a risk that the applicant might abscond, re-offend or obstruct the investigation essentially because he was charged with a serious intentional offence. In respect of the claimed violation of the two-year maximum period of pre-trial detention the court found that it had not been exceeded because that period concerned only detention pending the investigation stage of the proceedings and was not applicable to detention at the trial stage.

30. The Plovdiv Regional Court explicitly refused to examine the specific evidence in the case as to whether there was a reasonable suspicion against the applicant. In its decision of 13 July 1999 it stated that "[t]he court does not find it necessary to consider the evidence in substance...."

31. Similarly in its decision of 15 September 1999 it considered that "[t]he court cannot go into the specifics of the case and examine the collected evidence in the context of the [present] proceedings...."

32. On an unspecified date in 2000 the applicant filed another appeal against his detention under the rules introduced on 1 January 2000.

33. On 11 May 2000 the Plovdiv Court of Appeals dismissed the appeal, with reasoning similar to that contained in the previous decisions of the Plovdiv Regional Court.

34. On 29 August 2001 the applicant appealed before the Supreme Court of Cassation against the aforementioned decision of the Plovdiv Court of Appeals of 11 May 2000. The basis for the appeal was paragraph 19 of the Amendments to the CCP promulgated on 27 April 2001.

35. On 24 September 2001 the Supreme Court of Cassation refused to initiate cassation proceedings. It found that it was not competent to review the lawfulness of a detention at the trial stage.

36. The applicant was released on 3 December 2001 by virtue of the judgment of the Plovdiv Regional Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Grounds for detention

37. The relevant provisions of the Code of Criminal Procedure (the "CCP") and the Bulgarian courts' practice before 1 January 2000 are summarised in the Court's judgments in several similar cases (see, among others, *Nikolova v. Bulgaria* [GC], no. 31195/96, §§ 25-36, ECHR 1999-II; *Ilijkov v. Bulgaria*, no. 33977/96, §§ 55-59, 26 July 2001; and *Yankov v. Bulgaria*, no. 39084/97, §§ 79-88, ECHR 2003-XII (extracts)).

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

B. Scope of judicial control on pre-trial detention

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

40. In June 2002, interpreting the amended provisions on pre-trial detention, the Supreme Court of Cassation stated that when examining an appeal against pre-trial detention the courts' task was not only to verify whether the initial decision on remand in custody had been lawful but also to establish whether continued detention was still lawful and justified. In such proceedings the courts had to examine all available evidence on all

relevant aspects, including the amount of the recognisance as the case may be (TR 1-02 Supreme Court of Cassation).

C. Extraordinary right of appeal under the Amendments of the CCP of 27 April 2001

41. The relevant paragraph 19 provided the following:

> "Decisions of the appellate courts regarding the [grounds for] detention in pending cases, which have entered into force, can be appealed or challenged before the Supreme Court of Cassation within six months of entry into force of the present [amendments]."

THE LAW

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

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

Article 5 § 3 of the Convention provides, insofar as relevant:

> "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."

43. The Government stated that the applicant's pre-trial detention was based on the reasonable suspicion that he had committed the murder of 2 December 1997. They further contended that the authorities had acted as diligently as possible in the present case and that the length of the detention was the result of a number of objective factors. In particular, the case was extremely complex and required the examination of numerous witnesses, commissioning of various experts' opinions, performing DNA tests and conducting a crime-scene experiment. Thus, the Government considered that there were no unreasonable delays attributable to the authorities.

44. The applicant replied that the authorities never examined carefully the question whether or not there was a real danger of him absconding or committing offences if released but that they had applied the defective automatic approach according to which persons accused of serious intentional offences must be detained. He recalled that he had had no prior criminal record and that his family's financial and living conditions required consideration. The applicant also considered that the period of detention was excessive irrespective of whether the case was at the stage of the preliminary investigation or pending before the courts.

45. The Court observes, at the outset, that the applicant was detained on remand falling under Article 5 § 1 (c) of the Convention from 11 December 1997 to 3 December 2001, a period of three years, eleven months and twenty-three days (see paragraphs 9, 16, 22 and 36 above).

46. The Court notes that the complaint is similar to those in previous cases against Bulgaria where violations were found (see, for example, *Ilijkov*, cited above, §§ 67-87, and *Shishkov v. Bulgaria*, no. 38822/97, §§ 57-67, ECHR 2003-I). Likewise, in their decisions to extend the applicant's detention the authorities failed to assess specific facts and evidence about the possible danger of the applicant absconding, re-offending or obstructing the investigation. In some decisions they referred to the serious intentional offence with which he was charged (see paragraph 29 above), while in others no grounds were cited at all (see paragraph 24 above). Moreover, they refused to examine the specific evidence in the case as to whether there was a reasonable suspicion against the applicant (see paragraphs 30 and 31 above).

47. Consequently, in so far as the authorities did not consider it necessary to justify the continuation of the applicant's detention on each and every occasion and to rely on specific facts and evidence in that respect, it appears that they applied the defective approach according to which remand in custody was imposed and maintained automatically whenever the charges concerned a serious offence, without analysis *in concreto*.

48. Accordingly, the Court finds that the authorities failed to justify the applicant's continued detention on remand for a period of almost four years. Thus, there has been a violation of Article 5 § 3 of the Convention in that respect.

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

49. The applicant complained that the courts did not examine all factors relevant to the lawfulness of his detention. In addition, he maintained that some of his appeal were decided in violation of the requirement for a speedy decision under Article 5 § 4 of the Convention. Finally, the applicant complained that the Supreme Court of Cassation failed to rule on his appeal against his detention of 29 August 2001.

Article 5 § 4 of the Convention provides:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

50. The Government stated that the courts had periodically examined all aspects of the lawfulness of the applicant's detention and had done so in observance of the presumption of innocence, the justification of the

detention and other relevant factors, such as his personality. In addition, it contended that the applicant's appeals were decided speedily.

51. The applicant replied that the courts had not examined carefully whether there had been a danger of him absconding or re-offending if released and had refused to examine all aspects relevant to the lawfulness of his detention. He referred to previous cases against Bulgaria, where the Court found a violation when the domestic courts primarily relied on the seriousness of the offence to justify a continuation of the period of detention and disregarded the detainees' arguments concerning the alleged lack of danger of absconding, re-offending or hampering the investigation (see *Nikolova* and *Ilijkov*, both cited above). The applicant also argued that the courts had failed to speedily examine his appeals of 18 June and 2 September 1999. Finally, the applicant maintained that the courts failed to rule on his appeals of 16 September 1999 and 29 August 2001.

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

53. The Court notes that this complaint is very similar to those in previous cases against Bulgaria where violations were found (see *Nikolova*, §§ 54-66, and *Ilijkov*, §§ 88-106, both cited above). In particular, the courts considered that certain aspects of the lawfulness and the justification of the applicant's detention were beyond their jurisdiction (see *Nikolova*, cited above, § 61). In particular, the courts repeatedly failed to address the applicant's arguments and to assess specific facts and evidence about the possible danger of the applicant absconding, re-offending or obstructing the investigation, but simply relied on the seriousness of the charge against him to justify his continuing detention (see paragraph 29 above). In addition, they explicitly refused to examine the reasonableness of the suspicion grounding the arrest of the applicant, as noted in the decisions of the Plovdiv Regional Court of 13 July and 15 September 1999 (see paragraphs 30 and 31 above).

54. In view of the above, the Court finds that the applicant was denied the right to have the continued lawfulness of his detention reviewed effectively by a court.

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

55. In view of this finding, the Court does not deem it necessary to inquire whether these defective judicial reviews were provided speedily nor

whether all of them resulted in a final judicial decision (see, *mutatis mutandis*, *Nikolova*, § 65, and *Ilijkov*, § 106, both cited above).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 9,000 euros (EUR) in respect of non-pecuniary damage. He claimed that he had felt anguish having been unjustifiably deprived of his liberty for a considerable period of time and without the possibility to effectively challenge his detention in court.

58. The applicant also claimed EUR 1,660 in respect of pecuniary damage as a result of loss of employment income during the period of his detention when he was allegedly unable to work. He based the amount of his claim on the statutory minimum monthly salary in force over the given period and claimed that if had he been at liberty, he could have worked and therefore derived the stated income.

59. The Government challenged the applicant's claims for damage. They argued that they were arbitrarily determined, excessive and that they did not correspond to the awards made by the Court in previous similar cases. Moreover, the Government considered the applicant's claim in respect of pecuniary damage to be unsubstantiated.

60. The Court finds that the applicant's claim in respect of pecuniary damage is hypothetical and unsubstantiated in so far as he did not present any documents or evidence to show that he had been employed prior to his detention or that he had offers of employment for any period thereafter. Accordingly, the Court does not discern any causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, noting its finding of violations of Article 5 §§ 3 and 4 of the Convention (see paragraphs 48 and 54 above) and deciding on an equitable basis, it awards the applicant EUR 1,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

61. The applicant claimed EUR 5,930 for 145 hours of legal work by his lawyer before the domestic courts, at an hourly rate ranging from EUR 30 to

EUR 75 depending on the type of work involved. He also sought EUR 4,875 for 90.5 hours of legal work by his lawyer before the Court, at the hourly rate of EUR 50 or EUR 75 depending on the work involved. Lastly, the applicant claimed EUR 169 for translation, phone, photocopying, postal and office expenses of his lawyer. The total amount thus sought was EUR 10,974. He submitted a legal fees agreement between him and his lawyer, invoices for translation costs and postal receipts. The applicant requested that the costs and expenses incurred should be paid directly to his lawyer, Ms E. Nedeva.

62. The Government stated that the number of hours claimed was excessive, that the hourly rate for the work performed by the applicant's lawyer was determined arbitrarily and that the claimed expenses were excessive and that they did not correspond to previous such awarded by the Court in similar cases.

63. The Court reiterates that according to its case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the instant case, it considers that the number of hours claimed, both for the work before the domestic courts and before the Court, seems excessive and that a reduction is necessary on that basis. Having regard to all relevant factors and noting that the applicant was paid EUR 701 in legal aid by the Council of Europe, the Court considers it reasonable to award the sum of EUR 500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

64. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 5 § 3 of the Convention on account of the authorities' failure to justify the applicant's continued detention;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention on account of the applicant having been denied the right to have the continued lawfulness of his detention reviewed effectively by a court;

3. *Holds*

(a) that the respondent State is to pay to the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:

(i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;

(ii) EUR 500 (five hundred euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria, Ms E. Nedeva;

(iii) any tax that may be chargeable on the above amounts;

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

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

Done in English, and notified in writing on 9 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President