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

FIRST SECTION

CASE OF VASILEV v. BULGARIA

(Application no. 59913/00)

JUDGMENT

STRASBOURG

2 February 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 Vasilev v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 12 January 2006,

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

PROCEDURE

1. The case originated in an application (no. 59913/00) 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 Kiril Yonkov Vasilev ("the applicant"), on 14 April 2000.

2. The applicant, who had been granted legal aid, was represented by Mr I. Yordanov, a lawyer practising in Veliko Tarnovo. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

3. The applicant alleged, in particular, that his pre-trial detention and the criminal proceedings against him were excessively lengthy, in breach of Article 5 § 3 and Article 6 § 1 of the Convention, and that the scope of judicial review on the lawfulness of his detention was too narrow and in breach of Article 5 § 4 of the Convention.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 14 December 2004, the Court declared the application partly admissible.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings

7. On 20 January 1995 the applicant, who was 21 years old at the time, was charged with armed robbery and assault causing heavy injuries on one person and the death of another.

8. The charges, as modified later, concerned a number of robberies allegedly committed by an organised armed group who posed as traffic policemen and robbed motor vehicles and their passengers. The applicant had allegedly joined the group for its last two robberies. He was accused of being the one who had made the fatal gunshot killing the victim in one of those robberies.

9. The preliminary investigation was completed in August 1995 and in October 1995 an indictment was submitted to the Regional Court of Veliko Tarnovo against twelve persons, including the applicant.

10. The Regional Court held hearings on 11 December 1995, 3-10 January, 3-5 June and 2-12 September 1996. Numerous witnesses were heard and other evidence admitted.

11. On 12 September 1996 the applicant was convicted and sentenced to 16 years' imprisonment. Ten other accused persons were also convicted in the same proceedings.

12. On 16 September 1996 the applicant appealed to the Supreme Court.

13. The Supreme Court held hearings on 14 February, 25 April and 27 June 1997.

14. In 1997 the judicial system in Bulgaria was reformed. As a result, the applicant's case fell within the jurisdiction of the newly created appellate courts. On 1 April 1998 it was assigned to the Veliko Tarnovo Appellate Court and the file transmitted to that newly created court.

15. The Appellate Court held hearings on 11 January and 8 February 1999.

16. On 9 February 1999 the court set aside the Regional Court's judgment noting that two of the accused persons had been represented at the preliminary investigation stage by the same lawyer despite an obvious conflict of interest. In the court's view, that fact vitiated the whole procedure and warranted remitting the case to the investigation stage.

17. On 5 August 1999 an investigator reformulated the charges against the applicant.

18. On 23 September 1999 a fresh indictment was submitted to the Regional Court.

19. On 5 January 2000 the Regional Court remitted the case to the investigation stage.

20. On 2 May 2000 a third indictment was drawn up and submitted to the Veliko Tarnovo Regional Court. As all but one of the judges at that court had been involved in the examination of the case or had decided on the accused persons' applications for bail, in June 2000 the case was assigned to another court, the Lovech Regional Court.

21. A substitute judge and substitute jurors were designated and took part in the proceedings before the Lovech Regional Court.

22. The court held a hearing on 11 December 2000. It ordered a medical report and adjourned the examination of the case.

23. Between December 2000 and November 2005 the Lovech Regional Court fixed thirty-two dates for hearings: 12 February, 9 April, 10 September and 29 November 2001, 21 February, 15 April, 14 June, 1 October, 1 November and 11 November 2002, 14 January, 31 January, 14 March, 28 March, 20 May, 26 September and 18 December 2003, 20 February, 5 March, 30 April, 14 May, 28 May, 2 July, 15 July, 1 October, 29 October and 3 December 2004, 25 February, 18 March, 29 April, 30 May and 9 September 2005.

24. On each of those dates approximately fifteen to twenty-five of the persons summoned appeared before the Lovech Regional Court, including most accused persons and their lawyers. The applicant, who was in pre-trial detention until 31 July 2001 and at liberty thereafter (see paragraphs 24-49 below), and his lawyer were always present. However, on each of the thirty-two dates at least one of the accused persons or their lawyers did not appear and the Lovech Regional Court, considering that that was a bar to proceeding with the examination of the case, adjourned the hearing.

25. In most cases the persons who had not appeared had presented medical certificates indicating that they had fallen ill. In some cases one or more of the defence lawyers were unable to attend as they had been summoned in other proceedings. Several other adjournments were the result of unexplained absences of lawyers.

26. The Lovech Regional Court's approach during those five years consisted in noting the absences, adjourning the hearing and, where relevant, issuing orders to the lawyers concerned to explain the reasons for their absence and informing the local Bar about their failure to appear. On one occasion the court also appointed a medical expert to examine one of the accused persons who had been repeatedly absent on health grounds. No fines were imposed on lawyers who had failed to appear. It appears that the local Bar never sanctioned any of the lawyers. The possibility of separating the proceedings concerning some of the co-accused persons was not envisaged.

27. As of November 2005 the criminal proceedings against the applicant are still pending at the trial stage without any progress being made within the last five years.

28. In the meantime, in June 2003 two of the accused persons who had been released on bail in 2001 were arrested on charges that they had committed an armed robbery in January 2003 using the same method of operation as that employed in respect of the 1994-95 robberies.

B. The applicant's detention pending trial

29. The applicant was detained pending trial on 20 January 1995.

30. On 12 September 1996 the applicant was convicted and sentenced to a term of imprisonment. On 9 February 1999 the Appellate Court set aside his conviction and sentence and remitted the case to the investigation stage. The applicant remained in pre-trial detention.

31. Between February 1999 and his release in 2001 the applicant submitted a number of appeals against detention.

32. His appeal of 14 June 1999 was dismissed on 13 July 1999 by the Regional Court which noted that the applicant had been charged with very serious crimes, that the authorities had been working on the case actively and that the case was complex as it concerned several accused persons, a number of criminal acts and victims who were foreigners. Therefore, the reasonable time requirement had not been breached. As to the applicant's contention that the detention had become unjustified, there being allegedly no proof of any danger of his absconding or committing an offence, that argument was flawed, since under Article 152 § 2 of the Code of Criminal Procedure and the Supreme Court's practice the relevant issue was whether there was proof of absence of any danger of the accused person's absconding or committing an offence if released. No such proof existed in the applicant's case.

33. On 25 August 1999 the Regional Court dismissed another appeal by the applicant against his detention.

34. In his renewed appeal of 11 January 2000 the applicant relied, *inter alia*, on the new provisions on pre-trial detention, as in force since 1 January 2000. Under those provisions detention was only justified if there was proof of a danger that the accused person might abscond or commit offences.

35. The appeal was examined by the Regional Court at a hearing on 20 January 2000. According to the applicant, the prosecutor was sitting next to the judges.

36. On 20 January 2000 the Regional Court dismissed the appeal. It found that the new provisions in force since 1 January 2000 did not require proof of a danger that the accused person would abscond or commit an offence. The fact that the applicant was charged with a serious offence was sufficient justification.

37. On 24 January 2000 the applicant appealed to the Appellate Court against the Regional Court's decision of 20 January 2000.

38. The appeal was examined by the Appellate Court at a hearing on 27 January 2000. At the start of the hearing the applicant's lawyer requested that the prosecutor should not be allowed to sit next to the judges and thus overhear remarks exchanged between the judges and observe their reactions. Furthermore, it could not be excluded that the judges, knowing that the prosecutor was listening, might not feel free in their decisions. In any event, the sight of the prosecutor sitting with the judges inevitably influenced the general perception of the proceedings and, in particular, could raise doubts as to the court's independence and the equality between the parties.

39. The court rejected the lawyer's objection, stating that the prosecutor's physical place in the courtroom could not possibly affect the equality of the parties, which was a legal principle that was strictly observed.

40. The lawyer then requested the judges' withdrawal, stating that they had demonstrated partiality by accepting to sit together with the prosecutor. That motion was also rejected.

41. On 27 January 2000 the Appellate Court dismissed the appeal. It stated that under the relevant law as it stood until 1 January 2000 pre-trial detention had been mandatory in all cases concerning serious offences, save in exceptional circumstances. No such exceptional circumstances existed in the applicant's case: the charges concerned premeditated crimes committed by a group. Also, the nature of the offences and the manner in which they had been committed clearly pointed to a danger that the applicant might abscond or commit another offence if released.

42. According to the applicant, on 28 March 2000 he filed another appeal against his detention, reiterating his earlier arguments. No details as to its examination have been provided.

43. At the hearing on 11 December 2000 the applicant appealed against his detention. The Lovech Regional Court dismissed the appeal on the same day, stating that the case was very complex and that therefore the reasonable time requirement had not been breached.

44. Upon the applicant's appeal, the Regional Court's decision was upheld on 28 December 2000 by the Veliko Tarnovo Appellate Court. The court stated, *inter alia*:

> "In accordance with Article 152 § 1 of the Code of Criminal Procedure, as it was worded at the time when the applicant was initially placed in pre-trial detention, the [relevant authority] is bound to impose pre-trial detention when the charges concerned a "serious offence" [within the meaning of the Penal Code], as in the applicant's case. In such a case, as here, in accordance with Article 152 § 2 ... the real danger of the accused person's absconding or committing an offence is presumed *a priori*. Therefore, the applicant's complaint that it has not been established that there is a danger of him absconding or committing an offence is ill-founded."

45. At the hearing on 12 February 2001 the applicant again requested to be released. That was refused on the same day by the Lovech Regional Court on the grounds that there were no new circumstances warranting release. The applicant appealed.

46. On 8 March 2001 the Appellate Court dismissed the appeal. It stated, *inter alia*, that the term "reasonable time" had to be interpreted with due regard to the particular circumstances of the case, that all adjournments had been inevitable and that the charges concerned offences that were particularly dangerous. The court also stated:

> "The very fact that the [charges concern] the applicant's participation in a criminal group which has committed numerous robberies on the road – [offences] punishable by more than ten years' imprisonment – implies a danger of the applicant's absconding or committing an offence. The case file does not contain proof to the contrary and, therefore, the only lawful measure of judicial control for the [applicant] is remand in custody".

47. On 9 April 2001 the Lovech Regional Court decided to release the applicant on bail. No reasons were provided, except that by the same decision the court refused to release some of the other accused persons stating that the charges against them concerned a greater number of robberies. The amount of the recognisance was fixed at 4,000 Bulgarian levs (BGN).

48. The applicant appealed, considering that amount as excessive. On 27 April 2001 the Appellate Court rejected the appeal, reasoning that when examining an appeal against measures to secure appearance in court the appellate courts' power was limited to setting aside the particular measure and substituting it with a measure of another type; they had no jurisdiction to modify the amount of the recognisance fixed by the lower court.

49. On 31 July 2001 the applicant paid the recognisance and was released.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Grounds for pre-trial detention

1. Before 1 January 2000

50. Paragraphs 1 and 2 of Article 152 of the Code of Criminal Procedure, as worded at the material time and until 1 January 2000, provided as follows:

> "(1) Detention pending trial shall be ordered [in cases where the charges concern] a serious intentional offence.

(2) In cases falling under paragraph 1 [detention pending trial] may be dispensed with if there is no danger of the accused's absconding, obstructing the investigation, or committing further offences."

According to Article 93 § 7 of the Penal Code a "serious" offence is one punishable by more than five years' imprisonment.

51. The Supreme Court's practice at the time was to construe Article 152 § 1 of the Code of Criminal Procedure as requiring that a person charged with a serious intentional offence had to be remanded in custody. An exception was only possible, in accordance with Article 152 § 2, where it was clear and beyond doubt that any danger of absconding or reoffending was objectively excluded, for example, if the accused was seriously ill, elderly, or already detained on other grounds, such as serving a sentence (Decision no. 1 of 4 May1992, case no. 1/92, II Chamber, Bulletin 1992/93, p. 172; Decision no. 4 of 21 February 1995, case no. 76/95, II Chamber; Decision no. 78 of 6 November 1995, case no. 768/95, II Chamber; Decision no. 24, case no. 268/95, I Chamber, Bulletin 1995, p. 149). In some other decisions, the Supreme Court nevertheless embarked on an analysis of the particular facts to justify findings that there existed a danger of absconding or of offending (Decision No. 76 of 25.07.1997, case no. 507/97, II Chamber, Bulletin no. 9-10/97, p. 5; Decision no. 107 of 27.05.1998, case no. 257/98, II Chamber, Bulletin no. 3-4/98, p. 12).

2. Since 1 January 2000

52. As of that date the legal regime of detention under the Code of Criminal Procedure was amended with the aim to ensure compliance with the Convention (TR 1-02 VKS).

53. The relevant part of the amended Article 152 provides:

"(1) Detention pending trial shall be ordered [in cases concerning] offences punishable by imprisonment ... , where the material in the case discloses a real danger that the accused person may abscond or commit an offence.

(2) In the following circumstances it shall be considered that [such] a danger exists, unless established otherwise on the basis of the evidence in the case:

1. in cases of special recidivism or repetition;

2. where the charges concern a serious offence and the accused person has a previous conviction for a serious offence and a non-suspended sentence of not less than one year imprisonment;

3. where the charges concern an offence punishable by not less than ten years' imprisonment or a heavier punishment.

(3) Detention shall be replaced by a more lenient measure of control where there is no longer a danger that the accused person may abscond or commit an offence."

54. It appears that divergent interpretations of the above provisions were observed in the initial period of their application, upon their entry into force on 1 January 2000.

55. In June 2002 the Supreme Court of Cassation clarified that the amended Article 152 excluded any possibility of a mandatory detention. In all cases the existence of a reasonable suspicion against the accused and of a real danger of him absconding or committing an offence had to be established by the authorities. The presumption under paragraph 2 of Article 152 was only a staring point of analysis and did not shift the burden of proof to the accused (TR 1-02 VKS).

B. Scope of judicial control on pre-trial detention

56. 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 the Supreme Court's cases cited above and the decisions of the domestic authorities criticised by the Court in the cases of *Nikolova v. Bulgaria* [GC], no. 31195/96, ECHR 1999-II, *Ilijkov v. Bulgaria*, no. 33977/96, 26 July 2001 and *Zaprianov v. Bulgaria*, no. 41171/98, 30 September 2004).

57. 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 VKS).

C. Grounds for a decision of an appellate court to refer the case back to the prosecutor

58. Under the Code of Criminal Procedure, where an appellate court sets aside a trial court's judgement, it shall refer the case back to the investigation or indictment stage of the proceedings whenever the grounds for setting aside include, *inter alia*, a finding that there have been "substantial procedural violations" at those stages of the proceedings (Article 333 § 1(1)). The same criterion governs the trial court's power to terminate the trial and refer the case back to the prosecutor (Article 287

§ 1(1) and Article 246 § 2 in conjunction with Article 241 § 2(3) of the Code of Criminal Procedure).

59. On the basis of the broad statutory definition of the term "substantial procedural violation" under former Article 330 of the Code, in force until 1 April 1998, a wide range of omissions were considered as grounds for remitting a case to the preliminary investigation stage.

60. The definition of the term "substantial procedural violation" under Article 352 §§ 3 and 4 of the Code (in force since 1 April 1998, applicable *mutatis mutandis* to all judicial stages of the proceedings) is narrower than that under the former Article 330. Despite that fact, the courts continued to remit cases to the initial stage of the criminal proceedings too often, as noted by the Supreme Court of Cassation in its interpretative decision No. 2 of 7 October 2002.

THE LAW

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

61. The applicant complained that his pre-trial detention had been excessively lengthy and unjustified. He relied on Article 5 § 3 of the Convention which provides, in so far 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."

62. The applicant stated that the authorities never examined carefully the question whether or not there had been a real danger of him absconding or committing offences if released but had applied a formalistic approach according to which persons accused of serious offences must be detained. However, the applicant had not had previous convictions and had not committed offences or attempted to abscond after his release in 2001.

63. The Government stated that the applicant's pre-trial detention had been based on a reasonable suspicion of him having committed serious and violent criminal offences. Furthermore, there had been no specific facts excluding the presumed danger of his absconding or committing offences if released. In the Government's view, the applicant had failed to prove before the national courts that there had been no danger of him absconding or committing offences.

64. The parties also disagreed as to whether the authorities had proceeded with the requisite expedition and diligence. The applicant emphasised that he had not been the cause of the slightest delay and considered that the authorities had not acted diligently. The Government

referred to the complexity of the case and stated that objective factors, not the authorities' conduct, were the cause of the applicant's lengthy pre-trial detention.

65. The Court notes that the applicant's detention between 12 September 1996 (the date on which he was convicted and sentenced to a term of imprisonment) and 9 February 1999 (the date on which his conviction and sentence were set aside) fell under Article 5 § 1(a) of the Convention (see paragraphs 11, 16 and 30 above). Article 5 § 3 of the Convention did not apply with regard to that period.

66. It follows that the period to be examined under Article 5 § 3 of the Convention was approximately four years and two months (20 January 1995 – 12 September 1996 and 9 February 1999 – 31 July 2001).

67. The persistence of a reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the authorities continued to justify the deprivation of liberty. Where such grounds were relevant and sufficient, the Court must also ascertain whether the competent authorities displayed special diligence in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

68. It is undisputed that the applicant was held in custody on a reasonable suspicion that he had committed, in association with others, an armed robbery resulting in death and heavy injuries.

69. The Court considers that in view of the violent and audacious nature of the offences with which the applicant and the other members of the gang were charged (see paragraphs 7 and 8 above), the authorities could reasonably consider that there existed a danger of the applicant's absconding or committing offences if released.

70. However, the authorities must be criticised for having repeatedly applied, even after 1 January 2000 - the date on which Bulgarian law on pre-trail detention was amended -, legal provisions and practice according to which remand in custody was imposed and maintained automatically whenever the charges concerned a serious offence, without analysis *in concreto* (apart from serious illness or other exceptional factors) (see paragraphs 31-44 and 50-54 above). In the case of *Ilijkov v. Bulgaria* (no. 33977/96, §§ 84-87, 26 July 2001) and in a number of other Bulgarian cases, the Court found that the above practice was incompatible with Article 5 § 3 of the Convention.

71. In the present case the Court may nevertheless leave open the question whether relevant and sufficient reasons justified the applicant's pre-trial detention throughout its duration as it considers that the question which is at the heart of the case is whether or not the authorities displayed diligence in the handling of the criminal proceedings.

72. The Court observes in this respect that neither the applicant nor his lawyer was responsible for any of the numerous adjournments of the proceedings or for any other delay.

73. Following the Appellate Court's decision of 9 February 1999 to remit the case owing to a procedural deficiency, it took one year and ten months before the trial could start in December 2000. During that period the applicant was in custody (see paragraphs 16-22 and 31-44 above). The respondent Government have not provided a convincing explanation for that delay, which is difficult to reconcile with the requirement of due diligence in proceedings in which the accused person is in pre-trial detention.

74. The Court also notes that no progress was made in the trial proceedings in the following months. The applicant remained in pre-trial detention for another seven months, until his release on bail in July 2001. The authorities failed to take measures against the dilatory behaviour of the lawyers of some of the other accused persons, who caused numerous adjournments (see paragraphs 23-26 above).

75. Having regard to the above, and noting the length of the applicant's pre-trial detention – approximately four years and two months – the Court considers that there has been a violation of the 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 5 § 4 OF THE CONVENTION

76. The applicant complained that in the proceedings concerning the lawfulness of his detention, the domestic courts had not provided judicial control of full scope and had not observed the principles of impartiality and equality of arms.

77. The Court considers that these complaints fall to be examined under Article 5 § 4 of the Convention which 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."

A. As regards the scope of judicial review

78. The applicant stated, *inter alia*, that the courts had not examined the question whether there had been a danger of him absconding or committing offences if released and had also refused to deal with other relevant questions.

79. The Government stated that the courts had examined all aspects of the lawfulness of his detention and had replied to the applicant's arguments.

The Government considered that the only valid arguments the applicant had made before the national courts had concerned the length of his detention.

80. 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 v. Bulgaria* [GC] (no. 31195/96, § 58, ECHR 1999-II).

81. In the case at hand, the courts repeatedly stated, in their decisions of 1999 and 2000, that they were bound to refuse the applicant's requests for release as the charges against him concerned a serious offence. The courts considered that examining whether or not there existed a danger of the applicant's absconding or committing offences fell outside their task in the proceedings concerning the lawfulness of his continuing detention. That approach – already criticised by the Court in its *Nikolova* judgment (cited above, § 61) – was applied in the present case even after the reform of 1 January 2000 (see paragraphs 31-44, 56 and 57 above).

82. Moreover, on 27 April 2001, the Veliko Tarnovo Appellate Court found that it had no jurisdiction to examine whether the amount of the recognisance, as fixed by the Regional Court, was justified, despite the fact that the applicant remained in detention (see paragraph 48 above).

83. According to the Court's case-law under Article 5 § 3 of the Convention, the amount of the bail must be determined by reference to the detainee's assets and with due regard to the extent to which the prospect of loss of the security will act as a sufficient deterrent to the accused person's absconding (*Neumeister v. Austria*, judgment of 27 June 1968, Series A, p. 40 § 14). As the fundamental right to liberty guaranteed by Article 5 of the Convention is at stake, the authorities must take as much care in fixing appropriate bail as in deciding whether or not continued detention is indispensable (*Iwańczuk v. Poland*, no. 25196/94, 15 November 2001, § 66). Consequently, where the accused person remains in detention despite a decision ordering his release on bail, the question whether or not its amount is justified is an issue of lawfulness of the continuing detention and must be subject to judicial control, in accordance with Article 5 § 4 of the Convention. Indeed, the Supreme Court of Cassation recognised that in its interpretative decision of June 2002 (see paragraph 57 above). However, the Veliko Tarnovo Appellate Court in the applicant's case refused to deal with his appeal related to the amount of the bail.

84. The Court thus finds that the Bulgarian courts did not examine all questions relevant to the lawfulness, in the sense of Article 5 of the

Convention, of the applicant's pre-trail detention. It follows that there has been a violation of that provision.

B. Remaining complaints under Article 5 § 4

85. In view of its finding above the Court does not deem it necessary to examine the remainder of the applicant's complaints concerning the judicial control of lawfulness of his detention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

86. The applicant complained that the criminal proceedings against him were excessively lengthy. He relied on Article 6 § 1 of the Convention which provides:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

87. The applicant stated that the case had been adjourned numerous times without good reason. He emphasised that none of the adjournments had been caused by him or his lawyer. Also, no new evidence had been collected ever since 1996. In the applicant's view procedural errors on the part of the authorities and their failure to take measures against the persons who had not appeared at hearings had been at the origin of the excessive length of the proceedings.

88. The Government stated that the authorities had acted as diligently as possible in the difficult circumstances of the case and that the length of the proceedings had been the result of a number of objective factors. In particular, the case was factually complex and required the examination of numerous witnesses and other evidence, some of which had to be collected elsewhere by delegation. The case file comprised of 1,211 pages organised in seventeen volumes. In the Government's submission, the delay accumulated after June 2000 was not imputable to the authorities but was caused by the repeated failure of the lawyers of some of the accused persons to appear at the hearings.

89. The Court observes that the criminal proceedings against the applicant started on 20 January 1995 and are still pending at the trial stage (see paragraphs 7-27 above). The period to be examined is thus nearly eleven years.

90. The Court agrees with the Government that the case was factually complex as it involved numerous charges concerning several separate robberies allegedly committed by an organised criminal gang.

91. The Court is not convinced, however, by the Government's argument that "objective" factors explained the length of the proceedings.

92. In particular, in accordance with the transitional rules accompanying the 1997 reform of the judicial system, the proceedings on appeal in the applicant's case had to recommence despite the fact that the Supreme Court had already held four hearings and had advanced in the examination of the case (see paragraphs 12-15 below). While it is not for the Court to assess the choices made by the legislature in reforming the judicial system, it is not convinced that the resulting delay of more than two years was inevitable and justified in its entirety.

93. Furthermore, the only ground for the Appellate Court's decision of 9 February 1999 to remit the whole case to the investigation stage of the criminal proceedings was the fact that in the preliminary investigation stage, in 1995, the same lawyer had represented two of the accused persons despite an obvious conflict of interest (see paragraph 16 above). In the absence of a convincing explanation by the respondent Government, it is difficult to accept that remedying such a procedural deficiency justified setting at naught the entire trial that took place in 1995 and 1996 and recommencing the examination of the case from the investigation stage. The Government have not provided such an explanation. The Court has already noted in previous cases against Bulgaria that inordinate delays in criminal proceedings were brought about by the unjustified remittal of cases to the investigation stage of the proceedings (see *Kitov v. Bulgaria*, no. 37104/97, § 73, 3 April 2003).

94. The Court also notes with grave concern that for more than five years, ever since December 2000, the authorities have been incapable of achieving the slightest progress in the examination of the case. The Lovech Regional Court summoned the parties to thirty-two hearings, only to note that some of the accused persons or their lawyers had not appeared and that the case had to be adjourned. Little was done against the dilatory behaviour of some of the lawyers. No consideration was given to the possibility to separate some of the charges and examine them severally (see paragraphs 23-26 above). The resulting delay cannot be explained solely by "objective" factors, as argued by the Government. It is the fruit of the authorities' inability to take the measures necessary to organise the conduct of the criminal proceedings with due regard to Article 6 § 1 of the Convention and its reasonable time requirement.

95. The Court also notes that the applicant and his lawyer were present at all hearings and did not cause any delay.

96. The Court finds, in the light of the criteria laid down in its case-law and having regard to all the circumstances of the case that the length of the criminal proceedings failed to satisfy the reasonable time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed EUR 4,000 in pecuniary damages, calculated on the basis of the minimal monthly salary for 90 months. The applicant submitted, *inter alia*, that following his release on bail he was unable to find work as the criminal proceedings against him were still pending. The applicant also claimed EUR 15,300 in non-pecuniary damages.

99. The Government did not comment.

100. The Court considers that the applicant has failed to establish a causal link between the violations of the Convention found in the present case and the fact that he is unemployed. In particular, he has not claimed that he had been offered a job which he could not take owing to the excessive length of the criminal proceedings against him.

101. As to non-pecuniary damage, the Court, having regard to the circumstances of the case and deciding on an equitable basis, awards EUR 4,000 plus any tax that may be chargeable on that amount.

B. Costs and expenses

102. The applicant claimed EUR 10,500 in respect of legal fees, including EUR 3,300 for preparation and attendance of the hearings before the Bulgarian courts concerning the examination of the criminal case against the applicant, EUR 1,800 for preparation and attendance of the hearings before the Bulgarian courts concerning the applicant's pre-trial detention and EUR 4,900 for work on the proceedings before the European Court of Human Rights. The applicant enclosed a legal fees agreement between him and his lawyer.

103. The applicant also claimed EUR 980 for his travel expenses from his home in Vakarel, near Sofia, to Lovech and back, to attend all the hearings of the Lovech Regional Court (213 km one way), calculated on the basis of the prices of gasoline, EUR 420 for travel expenses for his lawyer, who lives in Veliko Tarnovo (89 km from Lovech), calculated on the same basis, and EUR 350 for translations, postal and other expenses. The applicant submitted copies of invoices and receipts concerning translation and postal expenses. He requested that the sums awarded be paid directly into his lawyer's bank account.

104. The total amount claimed in respect of costs and expenses was thus EUR 12,250.

105. The Government did not comment.

106. The Court considers that the claim concerning legal work in respect of the applicant's appeals against his pre-trial detention should be awarded in full. Also, it is noted that the amount of time spent by the applicant's lawyer to attend the hearings held by the Lovech Regional Court after December 2000 and the related travel expenses incurred by the applicant and his lawyer were a direct consequence of the authorities' failure to comply with the reasonable time requirement of Article 6 § 1 of the Convention. Some of the amounts claimed are, however, excessive.

107. Assessing all relevant circumstances, taking into account EUR 701 paid in legal aid from the Council of Europe and deciding on an equitable basis, the Court awards to the applicant, in respect of costs and expenses, EUR 5,500 plus any tax that may be chargeable on that amount.

C. Default interest

108. 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;

2. *Holds* that there has been a violation of Article 5 § 4 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *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, the following amounts:

(i) EUR 4,000 (four thousand euros) in respect of non-pecuniary damage, payable to the applicant himself;

(ii) EUR 5,500 (five thousand and five hundred euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria;

(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;

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

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

Søren NIELSEN
Registrar

Christos ROZAKIS
President