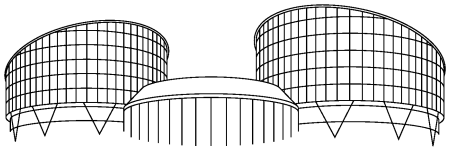

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF DIDOV v. BULGARIA

(Application no. 27791/09)

JUDGMENT

STRASBOURG

17 March 2016

FINAL

17/06/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Didov v. Bulgaria,

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

Angelika Nußberger, *President,*
Khanlar Hajiyev,
Erik Møse,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Carlo Ranzoni, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 23 February 2016,

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

PROCEDURE

1. The case originated in an application (no. 27791/09) 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 Stoyan Dimitrov Didov ("the applicant"), on 26 March 2009.

2. The applicant was represented by Mr S. Karov, a lawyer practising in Burgas. The Bulgarian Government ("the Government") were represented by their Agent, Ms K. Radkova, of the Ministry of Justice.

3. The applicant alleged that his six-and-a-half-hour detention by the police on 11 July 2007 had breached his right to liberty.

4. On 19 January 2015 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and lives in Burgas.

6. At about 6 a.m. on 11 July 2007 several police officers visited the applicant's home with a summons for him to report to the police station in the neighbouring town of Pomorie "as a witness" in relation to an investigation. The applicant alleged that he was not at home at the time and that he was alerted by phone by his wife. On the summons, on the other hand, it is noted that he refused to accept receipt.

7. At about 7 a.m. the applicant arrived at the Pomorie police station. He was notified that he was being detained under section 63(1)(1) of the Ministry of Internal Affairs Act ("the MIAA", see paragraph 15 below). The detention order stated that he was being detained on the basis of section 63(1)(1) "in connection with an offence under Article 195 of the Criminal Code", which refers to theft.

8. During his detention, the applicant was transported to a police station in Burgas and then back to the police station in Pomorie, where his fingerprints were taken. He was not interviewed, and no further investigative steps involving his participation were taken.

9. At about 12 a.m. the applicant was allowed to meet with a lawyer retained by his wife, who insisted that the police release him. The applicant was released shortly after that, at 1.30 p.m. on 11 July 2007.

10. Immediately after his release the applicant applied for judicial review of the detention order. In the framework of the ensuing proceedings the police presented an order dated 10 July 2007 and signed by a police investigator in Pomorie. They stated that the case file concerning the applicant contained no further documents. The order stated that a theft had been committed by an unknown person in a hotel in Pomorie and instructed the police to take the appropriate measures to search for the perpetrator.

11. The Burgas Administrative Court heard the case on 28 November 2007. It accepted the order mentioned in the preceding paragraph as evidence.

12. In a judgment of 21 December 2007 it upheld the detention order, holding that the applicant's detention had been in accordance with the law. It found, in particular, that for the lawful application of section 63(1)(1) of the MIAA it was not necessary that the police should hold evidence showing "in an unqualified manner" that the detainee had committed an offence; data "justifying a suspicion that there was a probability that the person had committed an offence" was sufficient. The domestic court noted further that the police had operational freedom as to the application of section 63(1)(1) of the MIAA.

13. On appeal by the applicant, on 17 November 2008 the Supreme Administrative Court upheld the judgment of the Burgas Administrative Court, reiterating its reasoning.

II. RELEVANT DOMESTIC LAW AND PRACTICE

14. The relevant domestic law and practice have been summarised in the Court's judgment in *Petkov and Profirov v. Bulgaria* (nos. 50027/08 and 50781/09, §§ 25-29, 24 June 2014), which concerned circumstances similar to the ones in the present case.

15. In particular, section 63(1)(1) of the MIAA, in force at the time, authorised the arrest by the police of an individual suspected of having

committed a criminal offence. Any detention thus ordered could not exceed twenty-four hours.

16. The State and Municipalities Responsibility for Damage Act, 1988 ("the SMRDA") provided in section 1(1) that the State and the municipalities were liable for damage caused to private individuals and legal entities as a result of unlawful decisions, acts or omissions on the part of their authorities or officials while discharging their administrative duties. The national courts have systematically accepted that detention orders under section 63(1) of the MIAA are administrative decisions within the meaning of section 1(1) of the SMRDA and that their setting aside gives rise to an entitlement for the persons affected by them to seek damages from the State.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 5 OF THE CONVENTION

17. The applicant complained under Article 5 § 1 of the Convention that his detention by the police had not been based on a reasonable suspicion that he had committed a criminal offence. He considered that the judicial review proceedings as to the lawfulness of his detention had been unfair because the national courts had reached the wrong conclusion. The applicant also complained under Article 5 § 2 of the Convention that he had not been informed of the reasons for his arrest. Relying on Article 6 § 1 and Article 13 of the Convention (although not explicitly on Article 5 § 4), he complained that he had not had any means at his disposal to challenge speedily the lawfulness of his detention and to obtain release. Lastly, without raising any separate complaints, he referred to Article 6 §§ 2 and 3 (a) and (c) of the Convention.

18. The Court finds that the above complaints fall to be examined under paragraphs 1, 2, 4 and 5 of Article 5 of the Convention, which, in so far as relevant, provides:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> (a) the lawful detention of a person after conviction by a competent court;
>
> (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

...

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

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

1. Complaints under Article 5 §§ 2 and 4

19. The Government urged the Court to declare the complaint under Article 5 § 2 inadmissible, because it had been made more than six months after the applicant had actually become aware of the reasons for his arrest; in their view, this had happened, at the latest, at the court hearing of 28 November 2007 where the police had presented the investigator's order of 10 July 2007 (see paragraphs 10-11 above).

20. The applicant pointed out that the domestic proceedings initiated by him had ended on 17 November 2008.

21. Under Article 35 § 1 of the Convention, the Court may only deal with complaints lodged within six months of the date on which a "final decision" was taken. Where no adequate domestic remedy is available, or where they are judged to be ineffective, the six-month time-limit in principle runs from the date of the act complained of (see, for example, *Bayram and Yıldırım v. Turkey* (dec.), no. 38587/97, 29 January 2002).

22. The Court agrees with the Government that the complaint under Article 5 § 2 of the Convention was submitted out of time. The applicant complained that he had not been informed of the reasons for his arrest. It has not been shown that any domestic remedy existed for that complaint; in particular, the judicial-review proceedings initiated by the applicant (see paragraphs 10-13 above) and referred to by him only concerned the lawfulness of his arrest, and the domestic courts did not deal with the alleged lack of information on the reasons for that arrest. Accordingly, the

six-month time-limit in respect of this complaint started running upon the applicant's release on 11 July 2007.

23. The Court is of the view that the same applies to the complaint under Article 5 § 4 of the Convention that the applicant did not have any means at his disposal to challenge his detention and obtain release (see paragraph 17 above). Even though the Government did not object to the admissibility of that complaint, the Court is obliged to examine of its own motion its compliance with the six-month rule (see, for example, *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I; *Blečić v. Croatia* [GC], no. 59532/00, § 68, ECHR 2006-III; and *Pashov and Others v. Bulgaria*, no. 20875/07, § 42, 5 February 2013).

24. The Court thus observes that the applicant was released on 11 July 2007 and it has not been claimed that he had any procedure at his disposal to remedy his grievances under Article 5 § 4. Once again, the judicial-review proceedings initiated by the applicant (see paragraphs 10-13 above) did not deal with this matter. Therefore, similarly to the complaint under Article 5 § 2, the six-month time-limit in respect of the complaint under Article 5 § 4 of the Convention started running upon the applicant's release on 11 July 2007.

25. The Court notes that the present application was brought by the applicant on 26 March 2009 (see paragraph 1 above) and thus finds that the complaints under Article 5 §§ 2 and 4 have been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. Remainder of the application

26. The parties did not comment on the admissibility of the remaining complaints.

27. The Court, for its part, notes that they are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Complaint under Article 5 § 1

(a) Arguments of the parties

28. The Government stated that the applicant had been detained on suspicion of having committed an offence, as provided for under Article 5 § 1 (c) of the Convention.

29. They noted that the case concerned the investigation of a specific offence – a theft committed by an unknown person in a hotel in

Pomorie - and contended that the applicant's arrest had been the only means of establishing any connection between him and that offence, and of confirming or rejecting any suspicions against him. They argued further that the arrest had not been arbitrary but, on the contrary, had been "necessary" in the circumstances. Lastly, they pointed out that, according to the Court's case law, in particular the case of *Brogan and Others v. the United Kingdom* (29 November 1988, Series A no. 145-B), the fact that the applicant had eventually neither been charged nor brought before a court did not automatically mean that the purpose of his detention was not in conformity with Article 5 § 1 (c).

30. The applicant contested the Government's argument that his arrest had been justified by a reasonable suspicion that he had committed an offence. He pointed out that at no point, either in the domestic proceedings or before the Court, had the authorities referred to specific information or facts in support of any such suspicion, and that it had never been explained how he had been connected to the offence under investigation. In his view, it was significant in this respect that the police file concerning him only contained the order of 10 July 2007 (see paragraph 10 above), and no further evidence possibly showing the existence of genuine suspicion against him.

(b) The Court's assessment

31. One of the aims of Article 5 § 1 of the Convention is to protect the individual from arbitrary detention. The Court has found the absence of any grounds given by the judicial authorities in their decisions authorising detention to be incompatible with the principle of protection from arbitrariness enshrined in Article 5 § 1 (see, among many others, *El-Masri v. the former Yugoslav Republic of Macedonia* [GC], no. 39630/09, § 230, ECHR 2012; *Belevitskiy v. Russia*, no. 72967/01, § 91, 1 March 2007; *Petkov and Profirov*, cited above, § 42).

32. Concerning the application of sub-paragraph (c) of Article 5 § 1, which is the sub-paragraph relied on by the Government (see paragraph 28 above), it permits deprivation of liberty only in connection with criminal proceedings. As regards the "reasonable suspicion" required under that provision, the Court has held that the fact that an applicant has not been charged or brought before a court does not necessarily mean that the purpose of his detention is not in accordance with that provision (see *Brogan and Others*, cited above, § 53). Sub-paragraph (c) of Article 5 § 1 does not presuppose that the police should have obtained sufficient evidence to bring charges. However, the requirement that the suspicion must be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention. For there to be reasonable suspicion that the detained person may have committed an offence, there must be facts or information which would satisfy an objective observer (see *Fox, Campbell*

and Hartley v. the United Kingdom, judgment of 30 August 1990, § 32, Series A no. 182; *Labita v. Italy* [GC], no. 26772/95, § 155, ECHR 2000-IV; *Gusinskiy v. Russia*, no. 70276/01, § 53, ECHR 2004-IV).

33. In the case of *Petkov and Profirov*, which, similarly to the present one, concerned short-term police detention under section 63(1)(1) of the MIAA, the Court found a violation of Article 5 § 1 on the basis of several elements. Firstly, it noted that the orders for the applicants' arrests did not refer to facts or information substantiating any reasonable suspicion that the applicants had committed offences. Although additional information had been presented during the subsequent domestic proceedings, the Court found that it was also insufficient to justify any such suspicion (*ibid.*, §§ 46-51). Secondly, the Court pointed out that the applicants had not been arrested with the purpose of bringing them before a competent legal authority, as further required by Article 5 § 1 (c), because the police had apparently not intended to carry out any investigation into the offences allegedly committed by them, and had merely kept the applicants in detention until the expiry of the statutory twenty-four-hour time-limit. In particular, the applicants had not been formally interviewed or involved in any other investigative measures. In addition, the Court criticised the MIAA for not clearly requiring that an arrest justified by a "reasonable suspicion" that the person affected had committed an offence should be carried out with the purpose of bringing them before a competent judicial body (*ibid.*, §§ 52-53 and 45).

34. The Court is of the view that similar considerations are applicable to the case at hand. As is clear from paragraph 7 above, the order for the applicant's detention only mentioned "an offence under Article 195 of the Criminal Code", and did not refer to any other specific circumstances or facts, linking him to that offence. As in *Petkov and Profirov* (§ 47 of the judgment), this alone could be a sufficient grounds to conclude that the applicant's deprivation of liberty was incompatible with the principle of protection from arbitrariness.

35. In addition, no facts or information substantiating a reasonable suspicion that the applicant in the instant case had committed an offence were presented during the subsequent domestic proceedings, where it was explained that the only document contained in the applicant's case file was the investigator's order of 10 July 2007. However, that document, which referred to a theft committed by an unknown person and instructed the police to investigate, did not mention the applicant or any relevant data or evidence against him (see paragraph 10 above). In the proceedings before the Court the Government did not refer to any additional information justifying a suspicion against the applicant.

36. While Article 5 § 1 (c) does not require that at such an early stage the police should have obtained the evidence necessary to bring charges, the information available should be able to satisfy an objective observer that the

person concerned may have committed an offence (see paragraph 32 above). The Court is not convinced that this was the case here, as it has not been demonstrated that the applicant was arrested upon a "reasonable suspicion" of having committed an offence, as required by Article 5 § 1 (c).

37. The above considerations are sufficient for the Court to conclude that the applicant's detention on 11 July 2007 was arbitrary. Accordingly, the Court does not need to examine whether the detention was also deficient for not being effected with the purpose of investigating further and bringing the applicant before a competent legal authority.

38. The Court thus finds that there has been a violation of Article 5 § 1 of the Convention.

2. Complaint under Article 5 § 5

39. The applicant also complained of the ineffectiveness of the judicial review proceedings initiated by him and of his inability to seek compensation.

40. The Government argued that the applicant would have been entitled to seek damages under section 1(1) of the SMRDA (see paragraph 16 above), had the order for his detention been set aside by the national courts. The applicant pointed out that the SMRDA was not applicable in his case, as the order was found at the domestic level to have been lawful.

41. The Court is of the view that it is appropriate to examine this complaint under paragraph 5 of Article 5 of the Convention. That provision is complied with where it is possible to apply for compensation in respect of a deprivation of liberty effected in conditions contrary to paragraphs 1, 2, 3 or 4 (see *Wassink v. the Netherlands*, 27 September 1990, § 38, Series A no. 185-A). The right to compensation set forth in paragraph 5 therefore presupposes that a violation of one of the preceding paragraphs of Article 5 has been established, either by a domestic authority or by the Court.

42. In the present case the Court has found that there was a breach of Article 5 § 1 of the Convention. It must therefore establish whether or not Bulgarian law afforded the applicant an enforceable right to compensation.

43. The Court notes in this regard that persons deprived of their liberty under section 63(1)(1) of the MIAA could seek damages under section 1(1) of the SMRDA; however, this was only possible where the respective detention order had been set aside as unlawful (see paragraph 16 above). In the instant case the applicant's detention was considered by the national courts as being in full compliance with the requirements of Bulgarian law. Accordingly, the applicant had no right to compensation under section 1(1) of the SMRDA (see *Petkov and Profirov*, cited above, § 75, and, *mutatis mutandis*, *Bochev v. Bulgaria*, no. 73481/01, § 77, 13 November 2008). It has not been argued that he was entitled to seek compensation under any other provision of domestic law.

44. Accordingly, the Court considers that in the present case there has also been a violation of Article 5 § 5 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. 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

46. The applicant claimed 1,000 euros (EUR) in respect of non-pecuniary damage.

47. The Government urged the Court to conclude that a finding of a violation would constitute sufficient just satisfaction in the case.

48. The Court is of the view that the applicant must have suffered frustration as a result of the breaches of his rights found above. Ruling in equity, it considers it justified to award him EUR 500.

B. Costs and expenses

49. The applicant also claimed EUR 1,110 for the work of his legal representative in the domestic proceedings and in the proceedings before the Court. In support of this claim he presented a time sheet. For the proceedings before the Court the applicant also claimed 330 Bulgarian levs (BGN), equivalent to EUR 169, for translation, postage and stationery. He presented two invoices showing that he had paid BGN 210, equivalent to EUR 107, for translation.

50. The Government did not comment on this claim.

51. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

52. In the case at hand, regard being had to the documents in its possession and the above criteria, the Court is of the view that the costs for legal representation were actual and necessary. As concerns quantum, the Court notes that it has dismissed some of the applicant's complaints raised before it (see paragraphs 19-25 above). Accordingly, the Court considers it reasonable to award the applicant EUR 900 for legal representation.

53. As to the remaining expenses, the Court awards EUR 107, the amount which the applicant has shown to have actually spent (see paragraph 49 above).

C. Default interest

54. The Court considers it appropriate that the default interest rate 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 complaints under Article 5 §§ 1 and 5 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 5 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 5 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, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 500 (five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,007 (one thousand and seven euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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 17 March 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President