



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

FOURTH SECTION

CASE OF PRESCHER v. BULGARIA

(Application no. 6767/04)

JUDGMENT

STRASBOURG

7 June 2011

FINAL

07/09/2011

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

In the case of Prescher v. Bulgaria,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Fatoş Araci, *Deputy Section Registrar*,

Having deliberated in private on 17 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 6767/04) 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, Mrs Bella Asenova Prescher (“the applicant”), on 16 February 2004.

2. The applicant was represented by Ms G. Yonkova, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicant alleged, in particular, that the criminal proceedings against her had lasted too long, that the travel ban imposed on her while they were pending had been unjustified and that the resulting interference with her family life had been disproportionate.

4. On 10 September 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 of the Convention). The case was subsequently assigned to the Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1962 and lives in Hanover. She has been married to a German national since 1996.

A. The criminal proceedings against the applicant

6. On 18 September 1992 an investigation was opened in Bulgaria against the applicant, who lived in Germany at that time, on suspicion that she had issued fraudulent cheques. On 28 September 1992 the applicant was charged *in absentia* and her pre-trial detention was ordered. A warrant for her arrest was issued and the proceedings were suspended.

7. The applicant learned of the proceedings against her on an unspecified date in late 1995 during a telephone conversation with the Bulgarian prosecuting authorities. On 14 December 1995 she was arrested by the German police in connection with extradition proceedings opened against her. Later on she was released. On 13 March 1998 the German authorities decided to extradite her. On 5 October 1998 they invited her to appear before the Bulgarian authorities by 26 October 1998, which she did not do. On 12 December 1998 the applicant was extradited to Bulgaria and taken to Sliven prison.

8. The criminal proceedings were resumed on 29 January 1999. On 17 May 1999 the applicant was charged again and questioned.

9. On 9 July 1999 the Sofia district prosecutor terminated the criminal proceedings against the applicant, finding that the charges had not been proved.

10. It appears that thereafter the applicant returned to Germany.

11. On 11 October 2001 the Sofia city prosecutor quashed the decree of 9 July 1999 and remitted the case for further investigation.

12. On 2 July 2002 the applicant travelled to Bulgaria and was arrested at Varna airport. The next day she was informed that the proceedings had been resumed and was questioned. She was released on bail on 11 July 2002.

13. In the period from 3 December 2002 to 4 June 2004 the investigator proposed on two occasions that the criminal proceedings be discontinued but the Sofia city prosecutor ordered a further investigation and on the latter date sent the case to Sliven regional public prosecutor's office. In a decree of 2 July 2004 the latter discontinued the criminal proceedings and referred the file to the Sofia district public prosecutor's office. A jurisdiction dispute arose, which was settled on 9 November 2004 when Burgas appeals public

prosecutor's office quashed the decree of 2 July 2004 and held that the Sofia city public prosecutor's office had authority to deal with the case.

14. Meanwhile, on 14 October 2004 the applicant made a request under Article 239a of the Code of Criminal Procedure that the case against her be examined by a court. On 3 December 2004 the prosecuting authorities sent the file to the Sofia District Court. It appears that a jurisdiction dispute arose between the District Court and the Sofia City Court, which was settled on 7 February 2005.

15. On 18 February 2005 the District Court invited the Sofia city prosecutor to indict the applicant within two months. It appears that this was done on an unspecified date in 2005.

16. On 26 October 2007 the District Court terminated the proceedings against the applicant as time-barred.

B. The prohibition on leaving the country

17. On 22 July 2002 the Sofia city prosecutor imposed a ban on the applicant's leaving Bulgaria without permission.

18. In 2002 the applicant made two requests to be allowed to visit Germany, which were dismissed by the Sofia city prosecutor on 27 September and 12 December 2002, respectively.

19. On 13 May 2003 the applicant again requested to be allowed to travel to Germany, stating that her husband was ill. She submitted medical certificates. On 15 May 2003 the Sofia city prosecutor dismissed the request. He stated that the family reasons put forward by the applicant did not justify the temporary lifting of the travel ban. He further noted that the case was factually and legally complex and required further investigation. The prosecutor also considered that the risk of the applicant absconding could not be ruled out, noting the 1995-98 extradition proceedings.

20. A subsequent request by the applicant was dismissed on 14 August 2003. The refusal was upheld by the City Court on 29 August 2003.

21. On 10 December 2003 the applicant again requested to be allowed to visit Germany for a month in order to spend the festive season with her family. She argued that she had never obstructed the investigation. On 12 December 2003 the Sofia city prosecutor again dismissed her request. Following an appeal, on 31 December 2003 the City Court upheld the refusal, reasoning that there was a risk that the applicant would not return to Bulgaria, which would additionally delay the criminal proceedings. The court noted that the delays which had occurred between 1992 and 2001 had been exclusively due to the applicant's behaviour.

22. It appears that the applicant made another unsuccessful request for permission to travel on an unknown date in 2004.

23. There is no information as to whether the applicant requested the lifting of the ban after 29 April 2006, when the Code of Criminal Procedure

of 2005 came into force. The applicant states that the District Court allowed her to visit her family in Germany on two occasions after 8 August 2006.

24. The prohibition on leaving the country was cancelled on 26 October 2007, when the criminal proceedings were terminated.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Article 239a of the Code of Criminal Procedure (CCP) of 1974

25. An amendment of June 2003 introduced the new Article 239a of the CCP, which provided for the opportunity for a person who has been charged to have his case examined by a court if the investigation has not been completed within the statutory time-limit (two years in investigations concerning serious offences and one year in all other investigations).

B. Prohibition on leaving the country

26. Article 35 § 1 of the 1991 Constitution provides that “[e]veryone shall have the right to ... leave the country” and that this right “may be subject to restrictions provided for in the law in the interest of national security or for the protection of public health and the rights and freedoms of others”.

27. Pursuant to Article 153a § 1 of the Code of Criminal Procedure of 1974, in force until April 2006, the public prosecutor had the power to rule that an individual accused of a deliberate offence punishable by imprisonment may not leave Bulgaria without a prosecutor’s permission. Until April 2006, such decisions were not amenable to judicial review. Where a request for permission to travel on particular dates was lodged the prosecutor had to rule within three days (Article 153a § 2), this ruling being amenable to judicial review (Article 153a §§ 3 and 4). At the trial stage, the power to impose a travel ban was vested in the trial court (Article 153a § 5). The Supreme Court of Cassation has held that trial court decisions under Article 153a § 5 were subject to appeal to a higher court (реш. № 129 от 8 май 2003 г. по н. д. № 780/2002 г., БКС, I н. о.).

28. On 29 April 2006 the above provisions were superseded by Article 68 of the Code of Criminal Procedure 2005. The legal regime described above remained unchanged, except that it became possible for the courts to set aside the initial decision of the prosecutor to impose a travel ban in cases where there was no risk of fleeing abroad.

THE LAW

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

29. The applicant complained that the length of the criminal proceedings against her had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

30. The Government argued that the case had been factually and legally complex and the charges against the applicant had been serious. The delays which had occurred before 1998 had been caused to a large extent by the applicant, who had absconded and obstructed the investigation. They further argued that the applicant had not availed herself in due time of the right under Article 239a of the 1974 CCP to have her case examined by the court.

31. The applicant replied that on 14 October 2004 she had made a request under Article 239a of the CCP 1974. However, due to a jurisdiction dispute, her request was not examined until 18 February 2005. She further argued that she had not caused any delays at the trial stage of the proceedings. She maintained that the overall length of the proceedings of about fifteen years had been excessive.

A. Period to be taken into consideration

32. The parties agreed that the applicant had learned of the criminal proceedings against her on an unspecified date in 1995, when she had a telephone conversation with the prosecuting authorities. However, the Court accepts that the applicant’s situation was substantially affected on 14 December 1995, when she was arrested by the German authorities in connection with the extradition proceedings against her (see *Foti and Others v. Italy*, 10 December 1982, §§ 52 and 53, Series A no. 56). The period ended on 26 October 2007, when the District Court terminated the proceedings as time-barred.

33. However, the Court notes that only those periods when the case was actually pending, that is, the periods when there had been no effective decision in the determination of the charges against the applicant and when the authorities were under an obligation to take such a decision, should be taken into account (see, *mutatis mutandis*, *Skorobogatova v. Russia*, no. 33914/02, § 39, 1 December 2005). Accordingly, the period between 9 July 1999 and 11 October 2001 is not to be counted towards the total period, because there were no criminal charges against the applicant, as the proceedings had been terminated. Thus the proceedings were pending

between 14 December 1995 and 9 July 1999 and between 11 October 2001 and 26 October 2007.

34. Accordingly, the period under consideration is approximately nine years and seven months, during which time the case was pending before the pre-trial authorities and the trial court.

B. Admissibility

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

36. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case and the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

37. Applying these criteria, the Court does not find that the applicant's case was particularly complex. In respect of the applicant's conduct, it notes that she refused to appear before the pre-trial authorities, which caused a delay of about three years (see paragraph 7 above). On the other hand, the Court finds a number of delays in the proceedings, which were attributable to the authorities, such as several remittals of the case by the public prosecutor to the investigating authorities, periods of inactivity, and jurisdiction disputes (see paragraphs 13-14 above).

38. In view of the above, having regard to the overall duration of the proceedings and the delays attributable to the authorities, the Court considers that in the instant case the length of the proceedings failed to meet the "reasonable time" requirement.

39. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

40. The applicant complained that the prohibition on her leaving the country pending the criminal proceedings had been unjustified and disproportionate. She relied on Article 2 of Protocol No. 4, which provides, in so far as relevant:

"2. Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of [that right] other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others...”

41. The Government argued that the ban had been imposed on the applicant in compliance with the law and in the interests of criminal justice. The measure was necessary because the applicant had obstructed the investigation.

42. The applicant contested these arguments. She maintained that the ban had not been necessary as there had been no risk that she would abscond.

A. Admissibility

43. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

44. The Court reiterates that Article 2 of Protocol No. 4 guarantees to any person the right to freedom of movement, including the right to leave any country. Any measure restricting that right must be in accordance with the law, pursue one of the legitimate aims referred to in the third paragraph of the above-mentioned Convention provision and be necessary in a democratic society for the achievement of that aim. Such a measure must strike a fair balance between the public interest and the individual's rights (see *Gochev v. Bulgaria*, no. 34383/03, § 44, 26 November 2009).

45. The Court observes that in this case it was not disputed that the ban imposed on the applicant constituted an interference with her rights under Article 2 of Protocol No. 4.

46. With regard to the lawfulness and the legitimate aim of this interference, the Court is satisfied that the ban was based on the provisions of the relevant legislation (see paragraphs 26-28 above). Furthermore, being designed to prevent the applicant from fleeing abroad, and thus to ensure the smooth progress of the proceedings and the possibility of enforcing any resultant sentence, the ban may be said to have pursued the legitimate aims of maintenance of public order and prevention of crime.

47. The Court observes that in the instant case the ban was imposed on 22 July 2002 and was lifted on 26 October 2007. Thus, it lasted about five years and three months.

48. Even if justified at the outset, a measure restricting an individual's freedom of movement may become disproportionate if it is extended over a long period (see, *mutatis mutandis*, *Gochev*, cited above, § 49, with further references).

49. The Court notes that the authorities had, at least initially, reason to be apprehensive about the possibility of the applicant's fleeing. The applicant refused to cooperate with the Bulgarian investigating authorities, which necessitated her extradition from Germany and delayed the criminal proceedings by three years. This might have been sufficient to justify the ban at the beginning.

50. However, as time went by, other factors militating in favour of lifting the ban emerged: the pace of the proceedings was unusually slow, the applicant did not obstruct the investigation and did not try to abscond although she was at liberty in Bulgaria, her prolonged absence from Germany increased the burden on her family life and she was not able to take care of her husband, who was ill. None of these matters seems to have been adequately addressed by the courts dealing with the applicant's requests and appeals. On the contrary, the prosecuting authorities and the courts continued automatically to rely on the risk that the applicant would abscond, a risk which must have receded in view of the amount of time which passed and the apparent inaction of the authorities conducting the proceedings. Furthermore, the authorities did not consider whether the applicant's presence continued to be necessary after so many years of investigation. It is true that in August 2006 the applicant received permission to travel abroad on particular dates (see paragraph 23 above). Although she did not provide information on the reasons which motivated the grant of permission, the Court cannot but note that it was given after the ban had been applied for four years and shortly before the expiration of the statutory prescription, when it must have become clear that the proceedings stood little chance of ending with a final judgment.

51. The Court, taking into account the overall duration of the travel ban before its temporary lifting and the other circumstances outlined above, finds that the Bulgarian prosecuting authorities and courts failed to provide sufficient justification for the continued prohibition on the applicant's travelling abroad throughout its duration (see *Riener v. Bulgaria*, no. 46343/99, § 128, 23 May 2006).

52. There has therefore been a violation of Article 2 of Protocol No. 4.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

53. The applicant complained that the travel ban, which had prevented her from maintaining normal contact with her husband in Germany, had amounted to an unjustified interference with her family life. She relied on Article 8 of the Convention, which provides, in so far as relevant:

“1. Everyone has the right to respect for his ... family life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

54. The Government argued that the travel ban had not been disproportionate because the applicant’s husband could join the applicant in Bulgaria. Moreover, the applicant had the opportunity to maintain contact with her husband by telephone, to receive correspondence and to be visited by him while in custody.

55. The applicant submitted that the lengthy and unjustified travel ban had practically destroyed her relations with her husband in Germany, which could not be regarded as justified for the achievement of any legitimate aim. Nor could her husband be required to mitigate the effects of the ban by settling in Bulgaria.

56. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible. However, having regard to the reasons for which it found a violation of Article 2 of Protocol No. 4 (see, in particular, paragraph 50 above), the Court does not consider it necessary to examine the same facts again by reference to Article 8 (see *Riener*, cited above, § 134, and *A. E. v. Poland*, no. 14480/04, §§ 53 and 54, 31 March 2009).

IV. THE REMAINDER OF THE APPLICANT’S COMPLAINTS

57. The applicant also complained, relying on Article 6 § 3 (a) and (c) of the Convention, that she had not been informed promptly of the nature and cause of the accusation against her and had not been allowed to meet her lawyer when she was arrested by the Bulgarian authorities on 12 December 1998. She further complained under Article 5, §§ 1, 2 and 3 of the Convention that her arrests on 12 December 1998 and 2 July 2002 had been unlawful, that she had not been informed promptly of the reasons for them and had not been brought promptly before a judge.

58. The Court has examined the remainder of the applicant’s complaints as submitted by her. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

59. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

1. *Pecuniary damage*

61. The applicant claimed the following amounts in respect of pecuniary damage: 1) 40,000 euros (EUR) paid by her husband to cover her living expenses in Bulgaria in the period from 2002 to August 2006; and 2) EUR 4,426 for plane tickets. In support of these claims she presented copies of bank statements, as well as air travel reservations and plane tickets dating from the end of 2006 and 2007 concerning trips made by the applicant. Some of the tickets concerned dates after the lifting of the travel ban.

62. The Government stated that there was no causal link between the support paid by the applicant's husband and the violations of the Convention, since it was likely that the applicant was being supported by her husband even before the period under consideration. They further argued that the claim for travel expenses had not been supported by sufficient documents.

63. The Court considers that the above claims are not supported by convincing evidence. As regards sums allegedly paid by the applicant's husband for her living expenses, the applicant has not convincingly established the nature of the alleged payments and any causal link with the violations found (see *Riener v. Bulgaria*, cited above, no. 46343/99, § 163). The same applies with regard to the claim for the price of plane tickets. Accordingly, the Court dismisses the claims for compensation for pecuniary damage.

2. *Non-pecuniary damage*

64. The applicant claimed EUR 1,250,000 for the period during which she had been prohibited from leaving the country and generally, for violations of the Convention in her case.

65. The Government argued that the claim was excessive.

66. The Court considers that the applicant must have suffered non-pecuniary damage as a result of the violations of the Convention found in the present case. Having regard to the materials in its possession and

ruling on an equitable basis, it awards EUR 5,000 to the applicant, plus any tax that might be chargeable.

B. Costs and expenses

67. The applicant claimed EUR 2,769.60 for the costs and expenses incurred before the Court, of which EUR 2,400 were for lawyer's fees and EUR 369.60 were for the costs of the applicant's lawyer's travel to Hanover. She further claimed 4,000 leva (BGN) for lawyer's fees incurred in the domestic proceedings and BGN 1,500 paid for her bail. She submitted a time-sheet in connection with the proceedings before the Court and receipts for the travel expenses.

68. The Government considered these amounts excessive and unsubstantiated. As to amount of the bail, they argued that it must have been restored to the applicant when the proceedings had been discontinued.

69. The Court reiterates that an applicant may recover his costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum. In the instant case, having regard to the documents in its possession and the above-mentioned criteria, the Court considers it reasonable to award the applicant EUR 1,000.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* admissible the complaints concerning the length of proceedings, the prohibition on leaving the country and the alleged interference with the applicant's family life, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant;
3. *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 8 of the Convention;
5. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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 leva at the rate applicable on the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,000 (one thousand 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;
6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 7 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President