



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

FOURTH SECTION

CASE OF SHAHANOV v. BULGARIA

(Application no. 16391/05)

JUDGMENT

STRASBOURG

10 January 2012

FINAL

10/04/2012

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

In the case of Shahanov v. Bulgaria,

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

Lech Garlicki, *President*,

David Thór Björgvinsson,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 6 December 2011,

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

PROCEDURE

1. The case originated in an application (no. 16391/05) 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 Nikolai Ivanov Shahanov (“the applicant”), on 26 April 2005.

2. The applicant was represented by Ms S. Stefanova and Mr M. Ekimdzhiev, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms N. Nikolova, of the Ministry of Justice.

3. The applicant alleged, in particular, that the conditions of his detention in Varna Prison had been inhuman and degrading, that his correspondence had been monitored, that the criminal proceedings against him had been inordinately lengthy and that he had not had effective remedies in respect of these complaints.

4. On 28 January 2010 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 § 1). The case was subsequently assigned to the Fourth Section.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and is currently serving a life sentence in Plovdiv Prison.

A. The conditions of the applicant's detention

1. Places of detention

6. In the period from 29 December 2002 to 18 February 2009 the applicant was detained in Varna Prison in connection with several sets of criminal proceedings for theft and for murder committed in the course of aggravated robbery. In November 2004 he was sentenced to life imprisonment.

7. On 18 February 2009 the applicant was moved to Plovdiv Prison. According to the applicant, he was initially placed in a cell together with a smoker. On 29 May 2009 he was placed in an individual cell.

2. Civil actions for damages brought by the applicant

(a) The first set of proceedings concerning the period from 25 February 2003 to 19 April 2004

8. On 19 April 2004 the applicant brought an action against the Ministry of Justice. He claimed 50,000 leva (BGN) (25,565 euros (EUR)) in damages, alleging that he had suffered distress and humiliation as a result of the poor conditions in which he had been detained in Varna Prison in the period from 25 February 2003 to 19 April 2004. On 25 October 2004 the Varna District Court instructed the applicant to specify and quantify the damage sustained by him as a result of each alleged act or omission of the prison administration. This resulted in the applicant having to split his initial claim into five separate claims of BGN 10,000 (EUR 5,113) each, as follows: (1) for poor sanitary conditions in the prison; (2) for the lack of opportunity to maintain his personal hygiene on a daily basis; (3) for poor living conditions in the cell; (4) for food of poor quality and insufficient quantity; and (5) for inadequate medical services.

9. The District Court questioned several witnesses, gathered written evidence and on 19 January 2007 partly granted the first claim. It established that the applicant had been allowed to leave his cell three times a day for forty-five minutes each time and had had to use a bucket in the cell for his toilet needs outside these periods, in front of other prisoners, which had been upsetting for him. It found that the amount of BGN 100 (EUR 51) would

remedy the discomfort experienced by him. As to the remaining four claims, the court noted witnesses' statements to the effect that there had been no running water in the applicant's cell, that the cell had been damp and draughty, without a floor covering and with plaster peeling off the walls; the toilets and the canteen had been infested with rats; and the applicant had only been allowed to bathe once every two weeks. However, it held that it had not been proven that these deficiencies had caused any damage to the applicant. The court further considered irrelevant the fact that there had been rats in the toilets and in the canteen, as the applicant had not mentioned rats in his statement of claim. As to the claim concerning the medical services in prison, the District Court established that the applicant suffered from asthma and epilepsy. On the basis of his medical records, it found that he had been examined by a physician at least once a month and had been prescribed treatment. It further noted that on several occasions he had been urged to refrain from smoking but apparently he had not followed this advice. It therefore dismissed this claim as ill-founded. It also dismissed the claim concerning the quality and quantity of food, reasoning that the applicant had failed to adduce any arguments or evidence in this respect.

10. Following an appeal, in a judgment of 20 July 2007 the Varna Regional Court increased the compensation under the applicant's first claim to BGN 500 (EUR 255) and upheld the remaining part of the judgment of 19 January 2007. It held that while the witnesses had established that the applicant had been embarrassed by the use of the bucket for his sanitary needs, they had not said anything about his feelings towards the other conditions complained of. The applicant appealed further.

11. In a final judgment of 27 April 2009 the Supreme Court of Cassation upheld the judgment of 20 July 2007. It noted that the applicant had failed to show that he had suffered any non-pecuniary damage in respect of the four claims dismissed by the lower courts.

(b) The second set of proceedings concerning the period from 20 February 2005 to 15 September 2006

12. In 2009 the applicant brought a further action against the Ministry of Justice, claiming a total of BGN 10,000 (EUR 5,113) in compensation for non-pecuniary damage in connection with the conditions of his detention in Varna Prison. For reasons which have not been substantiated, the claim only concerned the period from 20 February 2005 to 15 September 2006.

13. The Varna Administrative Court heard several witnesses and on 9 December 2009 dismissed the applicant's action. Its findings about the conditions in Varna Prison were similar to those made by the courts in the previous set of proceedings (see paragraph 9 above). Unlike those courts, however, the Varna Administrative Court held that continuous access to a toilet, running water, ventilation and sufficient natural light were to be provided only where possible. The court based its conclusion on statutory provisions concerning pre-trial detention facilities, finding that they were

applicable by analogy to prisons. It further held that it was unproven whether the applicant suffered from any diseases or whether he had sustained any non-pecuniary damage as a result of the conditions in which he had been detained.

14. Following an appeal, in a final judgment of 15 October 2010 the Supreme Administrative Court upheld the judgment of 9 December 2009, reasoning that the size of the applicant's cell had met the legal requirements and that the applicant had not proved that he suffered from any diseases.

B. The monitoring of the applicant's correspondence and the prohibition of telephone contact between the applicant and his lawyer

15. The applicant submitted six letters and envelopes addressed by him to his lawyer. Half of them were sent from Varna Prison and the other half from Plovdiv Prison. Each envelope was marked or stamped as having been monitored by the prison administration. As noted in a letter from the administration of Plovdiv Prison submitted by the Government, the prison administration, acting in compliance with section 37 of the Regulations for the Implementation of the Enforcement of Sentences Act, routinely opened all envelopes, including those sent to lawyers, to check their physical contents, without reading the text of the letters therein.

16. Shortly after his transfer to Plovdiv Prison in 2009, the applicant complained that he had not been allowed to contact his lawyer by phone. Following an inquiry, in a letter of 2 April 2009 the General Directorate of Enforcement of Sentences at the Ministry of Justice informed him that lawyers were not among the individuals whom prisoners were entitled to contact by phone under section 37a of the Regulations for the Implementation of the Enforcement of Sentences Act. It was further explained that the applicant had been sentenced to life imprisonment and was not involved in any pending proceedings. It appears that the applicant took steps to show that there were indeed criminal proceedings pending against him. Eventually, on 28 May 2009 the applicant's lawyer was included in the list of individuals whom the applicant was allowed to contact by phone.

C. Length of the criminal proceedings for theft against the applicant

17. On an unspecified date in 1999 the investigating authorities in Plovdiv opened an investigation into a number of car thefts. On 21 April 2000 the applicant was placed in pre-trial detention as a suspect. Later on he was charged and questioned.

18. On 16 February 2001 the Plovdiv district public prosecutor's office filed an indictment against the applicant and three other individuals with the Plovdiv District Court.

19. The District Court scheduled fifteen hearings in the case. Three hearings were postponed because of the applicant's absence, which caused a delay of about six months; six hearings were adjourned because of the failure of court-appointed experts to appear or for additional expert reports to be obtained; two hearings were postponed because of the failure of one or more of the applicant's co-defendants, or their lawyers, to appear; and three hearings were adjourned due to the absence of the judge or a juror. In the examination of the case, the court admitted six expert reports and questioned at least thirteen witnesses.

20. In a judgment of 9 December 2003 the District Court convicted the applicant of a number of counts of car theft in complicity with others.

21. Following an appeal, the Plovdiv Regional Court conducted four hearings and questioned several witnesses. One hearing was adjourned because of the non-appearance of a witness, and the other two hearings were adjourned because two of the applicant's co-defendants were sick.

22. On 3 June 2005 the Regional Court quashed the judgment of 9 December 2003 because of insufficient and contradictory reasoning, and remitted the case.

23. The District Court scheduled ten hearings. Three hearings were adjourned because the judge was on maternity leave, another one, because she had been promoted to a higher court; one hearing was postponed because it was necessary to appoint a State-appointed lawyer for the applicant; and three hearings were adjourned because part of the physical evidence was missing. On 20 December 2007, more than two years after the beginning of the second trial, the District Court terminated the court proceedings and remitted the case to the investigative authorities because it had discovered procedural violations at the pre-trial stage.

24. On 21 February 2008 the district public prosecutor's office terminated the criminal proceedings against the applicant. On 24 September 2008 the Plovdiv regional public prosecutor's office quashed the decree of 21 February 2008 and remitted the case for further investigation. On 23 January 2009 the applicant was charged anew and questioned.

25. In a decree of 6 April 2009 the district public prosecutor's office again terminated the criminal proceedings against the applicant for lack of proof. It appears that the decree was not appealed against and it became final.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Enforcement of sentences

26. The relevant domestic law concerning enforcement of sentences is set out in the Court's judgment in the case of *Iliev and Others v. Bulgaria* (nos. 4473/02 and 34138/04, §§ 23-24, 10 February 2011).

B. Prisoners' correspondence and telephone conversations

27. The relevant domestic law and practice concerning prisoners' correspondence are set out in the Court's judgment in the case of *Iliev and Others*, cited above, §§ 25-31.

28. The relevant domestic law concerning prisoners' telephone conversations is set out in the Court's judgment in the case of *Petrov v. Bulgaria* (no. 15197/02, § 24, 22 May 2008).

C. The State and Municipalities Responsibility for Damage Act

29. The relevant provisions of the State and Municipalities Responsibility for Damage Act ("SMRDA") and the case-law on its implementation are set out in the Court's judgment in the case of *Kirilov v. Bulgaria* (no. 15158/02, §§ 43-48, 22 May 2008).

D. The Code of Criminal Procedure ("CCP")

30. The relevant domestic law and practice concerning the possibility for an accused to have his or her case brought to trial or obtain the discontinuance of the proceedings (Article 239a of the 1974 CCP, superseded by Article 368 of the 2006 CCP) are set out in the Court's judgment in the case of *Dimitrov and Hamanov v. Bulgaria*, nos. 48059/06 and 2708/09, § 38-45, 10 May 2011.

III. REPORTS OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ("THE CPT")

31. In 2010 the CPT visited Varna Prison for the first time. Its report on the visit has not yet been made public.

32. During its visits to other prisons in Bulgaria, it noted the use of buckets by prisoners for their sanitary needs. Finding this practice "unacceptable", it recommended several times that it be discontinued (see, for example, paragraphs 73 and 77 concerning Sofia Prison of the report of its 2006 visit to Bulgaria (CPT/Inf (2008) 11), and paragraphs 82, 87 and 118 concerning Burgas and Pleven Prisons of the report of its 2002 visit to Bulgaria (CPT/Inf (2004) 21)).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

33. The applicant complained under Articles 3 and 13 of the Convention that the conditions in Varna Prison had been inhuman and degrading and that he had not had an effective remedy in this respect.

Article 3 reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. The parties' submissions

1. *The Government*

34. The Government pointed out that the applicant had already been awarded damages in the domestic proceedings on account of the poor living conditions in Varna Prison for the period from 25 February 2003 to 19 April 2004. They further argued that he had failed to exhaust domestic remedies, as it had been open to him to seek damages in respect of the remaining period of his detention in that prison. They cited a number of judgments in which domestic courts had awarded damages in connection with poor conditions of detention. Furthermore, the Government were of the view that the suffering inflicted on the applicant had not reached the minimum level of severity required under Article 3 of the Convention. They maintained that the conditions in which the applicant had been detained in Varna Prison had been the same for all prisoners and therefore had not revealed any intention of humiliating the applicant.

2. *The applicant*

35. The applicant contested those arguments. He argued that the conditions of his detention had amounted to inhuman and degrading treatment, which had also been recognised by the domestic courts.

36. Referring to Article 13, the applicant pointed out that he had brought actions for damages concerning a part of the period of his detention in Varna Prison. However, in the first set of proceedings the domestic courts had split his complaints into five separate claims and had eventually rejected most of

them. Furthermore, referring to the Court's judgment in the case of *Iovchev v. Bulgaria* (no. 41211/98, 2 February 2006), the applicant considered that the domestic courts' requirement of separate proof for the non-pecuniary damage sustained, regardless of the fact that they had found the living conditions in the prison to have been degrading, had deprived this remedy of the effectiveness it may in principle have had. As to the second set of proceedings, the applicant stated that the domestic court had dismissed his action, reasoning that the State had not been obliged to provide better conditions than those existing in the prison.

B. The Court's assessment

1. Admissibility

(a) Article 3 of the Convention

(i) Victim status

37. Seeing that the applicant brought two claims for damages in respect of the conditions of his detention for the periods from 25 February 2003 to 19 April 2004 and from 20 February 2005 to 15 September 2006 and obtained an award of damages in the first set of proceedings (see paragraphs 8-14 above), the question arises as to whether the applicant can still be considered a victim of a violation of Article 3 in respect of these periods. Even though they did not phrase it explicitly, the Government raised such an argument, as they referred to the fact that the applicant had been awarded compensation (see paragraph 34 above).

38. The question whether an applicant can claim to be a victim of an alleged violation of the Convention is relevant at all stages of the proceedings under the Convention (see, among other authorities, *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III). That question essentially entails on the part of the Court an *ex post facto* examination of the applicant's situation. A decision or measure of the domestic authorities favourable to the applicant is not in principle sufficient to deprive him or her of his or her status as a victim unless those authorities have acknowledged, and then afforded adequate redress for, the breach of the Convention (see, as a recent authority, *Ciorap v. Moldova* (no. 2), no. 7481/06, § 18, 20 July 2010).

39. Applying these principles to the present case, the Court notes that in the first set of proceedings concerning the period from 25 February 2003 to 19 April 2004 the authorities only acknowledged and redressed one aspect of the applicant's claim: the complaint concerning the use of the bucket in his cell.

40. The domestic courts instructed the applicant to split his initial claim into five separate claims (see paragraph 8 above), considering each element

of the conditions of detention as a separate issue needing a separate analysis as to its possible impact on the applicant's well-being. The Court finds that this analysis had the effect of diminishing the relevance of each argument in assessing the overall conditions of detention and thus amounted to a failure to consider the cumulative effects of these conditions on the applicant, as required by the Convention (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). Such an approach could easily lead to the conclusion that none of the complaints were, in themselves, serious enough to call for compensation, even in cases where the general impact on the particular prisoner, had it been assessed in the light of the Convention case-law, would have been found to reach the threshold under Article 3 of the Convention (see *Iliev and Others*, cited above, § 49).

41. Secondly, the Court cannot but note that the domestic courts dismissed most of the applicant's complaints only because they found that he had not proved the non-pecuniary damage he had suffered. For example, they noted the witnesses' testimony that the applicant had been held in a damp cell in a poor state of repair, that there had been rats in the toilets and the canteen and that the applicant had only been allowed to bathe once a fortnight. However, they considered that no mental distress and suffering had been proved in this respect and that, concerning the rats, their presence could not be taken into consideration, as the applicant had not mentioned them when complaining of bad conditions in general (see paragraph 9 above). The Court has previously criticised this approach of the domestic courts in a number of judgments against Bulgaria (see *Iovchev*, § 147, *Iliev and Others*, § 48, both cited above, and *Radkov v. Bulgaria (no. 2)*, no. 18382/05, § 39, 10 February 2011), remarking that it was unduly formalistic and allowed a large number of cases involving complaints of emotional distress rather than physical injury or illness to be dismissed as unsubstantiated. The present case is, regrettably, another example of a fundamentally flawed approach to damages for inhuman and degrading conditions of detention.

42. As to the second set of proceedings concerning the period from 20 February 2005 to 15 September 2006, the Court notes that the domestic courts dismissed the entirety of the applicant's claim, holding that the State was not at all obliged under domestic law to provide better conditions than those existing in the prison (see paragraphs 13-14 above). In particular, they found that continuous access to a toilet, running water and sufficient daylight were to be provided only where possible. On the basis of this reasoning, the Court cannot but conclude that in this set of proceedings the domestic courts not only failed to consider the cumulative effects of the conditions on the applicant but even denied the very existence of the State's duty to secure detention conditions compatible with Article 3.

43. In view of the foregoing, despite the fact that the applicant's claim for non-pecuniary damages was partly allowed in the first set of proceedings, the Court is not convinced, having regard to the outcome of the two sets of

proceedings, that the authorities have acknowledged the totality of the breach of Article 3 of the Convention. Nor did they provide him with adequate redress. It follows that the applicant may still claim to be a victim of a violation of Article 3 of the Convention.

44. The Government's objection must therefore be dismissed.

(ii) Exhaustion of domestic remedies

45. The Government also raised a non-exhaustion objection as regards the remaining period of detention in the same prison, stating that the applicant had not sought damages under the SMRDA (see paragraph 34 above).

46. The Court has accepted, on the basis of developments in the Bulgarian courts' case-law since 2003, that a claim under the SMRDA is in principle an effective remedy for poor conditions of detention, provided that the applicant has either been released or placed in conditions which meet Convention standards (see *Hristov v. Bulgaria* (dec.), no. 36794/03, 18 March 2008, and *Radkov* (no. 2), cited above, §§ 37 and 53).

47. The Court notes that on 18 February 2009 the applicant was transferred to another prison. He did not allege that he had been subjected to similar conditions there. A compensation action cannot therefore be ruled out as ineffective in respect of the complaint that between September 2006 and February 2009 the applicant remained in the same inadequate conditions of detention. As the Court found in *Radkov* (2) (cited above, § 59), the fact that no adequate redress was obtained in a previous action by the applicant does not automatically mean that another action would have been devoid of any prospect of success. The Court notes, however, that unlike *Radkov* (2), in the present case the applicant did bring a further action, several years after the first one. Regrettably, its outcome was even worse, as the courts found that no obligation on the State to provide better conditions existed (see paragraphs 13-14 above). Thus, after having brought two sets of proceedings involving questioning of witnesses, gathering written evidence and appeals to several levels of the courts, it cannot be considered that the applicant was required under Article 35 § 1 of the Convention to attempt a third action before the same courts and for the same purpose. The Court emphasises that the application of the exhaustion rule must be applied with some degree of flexibility and without excessive formalism. It has already held that the rule of exhaustion is neither absolute nor capable of being applied automatically; for the purposes of reviewing whether it has been observed, it is essential to have regard to the circumstances of the individual case. This means, in particular, that the Court must take realistic account not only of the existence of formal remedies in the legal system of the Contracting State concerned, but also of the general context in which they operate, as well as the personal circumstances of the applicant. It must then examine whether, in all the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust

domestic remedies (see *Spasovski v. "the former Yugoslav Republic of Macedonia"*, no. 45150/05, § 23, 10 June 2010, with further references). Therefore, and without speculating about the possible outcome of a further action under the SMRDA, the Court considers that in the specific circumstances of this case the applicant could not be expected to have brought a third claim in respect of the remaining period of his detention in Varna Prison.

48. Accordingly, the Government's objection based on non-exhaustion of domestic remedies should be dismissed.

(iii) Conclusion

49. In view of the above considerations, the Court considers that the complaint under Article 3 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

(b) Article 13 of the Convention

50. The Court considers that the complaint under Article 13 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Article 3 of the Convention

51. Restatements of the general principles concerning the examination of conditions of detention under Article 3 may be found in the Court's recent judgments in the cases of *Ślawomir Musiał v. Poland*, no. 28300/06, §§ 85-88, ECHR 2009-... (extracts); *Orchowski v. Poland*, no. 17885/04, §§ 119-122, ECHR 2009-... (extracts); and *Norbert Sikorski v. Poland*, no. 17599/05, §§ 126-131, 22 October 2009.

52. The Court observes that the period to be taken into account is from 29 December 2002 to 18 February 2009, i.e. six years and two months less eleven days.

53. In the domestic proceedings, the courts found that the conditions in which the applicant had been detained at Varna Prison had been poor (see paragraphs 9 and 13 above). In particular, they found that the applicant had not had access to a toilet or running water, save for short intervals three times a day. Outside these periods, he had had to use a bucket in the cell for relieving himself. This had often happened in the presence of other inmates. He had only been able to bathe once a fortnight. Further, while the courts did not make formal findings in this respect, they noted the witnesses' statements that the canteen and the sanitary premises had been infested with rats and that the cell had been draughty and damp. These facts were not disputed by the

Government. Taking into account the cumulative effects of these conditions on the applicant as well as the period of his detention, the Court considers that the distress and hardship endured by him exceeded the unavoidable level of suffering inherent in detention and went beyond the threshold of severity under Article 3 (see *Slavcho Kostov v. Bulgaria*, no. 28674/03, § 54, 27 November 2008). In these circumstances, even accepting that the applicant's allegations of inadequate food and medical help are not supported by sufficient evidence, the Court considers that the other aspects of the conditions of his detention were serious enough to be qualified as degrading treatment.

54. There has therefore been a violation of Article 3 of the Convention.

(b) Article 13 of the Convention

55. The Court has already found that the compensation claims brought by the applicant had failed to provide him adequate redress, chiefly as a result of the domestic courts' excessively formalistic approach which was found to be in breach of Article 13 in a number of judgments against Bulgaria (see, among others, *Iovchev*, § 146, *Radkov (2)*, § 53, *Iliev and Others*, § 68, all cited above). It further notes that at the time he brought those proceedings the applicant was still detained in the same conditions and was not moved to another prison until several years later. As already observed, remedies for conditions of detention which are of a purely compensatory nature may be regarded as effective only in respect of applicants who have been either released or placed in conditions which meet Convention standards (see *Orchowski*, § 109, and *Norbert Sikorski*, § 116, both cited above). The Government have not pointed to any other remedies available to the applicant and capable of leading to any improvement of the conditions.

56. It follows that there has been a breach of Article 13 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 8 AND 13 OF THE CONVENTION

57. The applicant complained that the prison authorities in Varna and Plovdiv Prisons had monitored the correspondence between him and his lawyer and that he had not had any effective domestic remedies in this respect. He relied on Articles 8 and 13 of the Convention.

Article 8 reads:

“1. Everyone has the right to respect for his ... correspondence.

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.”

Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

58. The Government stated that unjustified monitoring of correspondence by the administration fell within the scope of the SMRDA, and argued that the applicant had failed to exhaust the available domestic remedies. They further stated that the prison administration had not read the letters sent by the applicant but only had checked the physical contents of the envelopes.

A. Admissibility

59. The Court has already found that the SMRDA was not an effective remedy in cases of unjustified monitoring of prisoners’ correspondence (see *Iliev and Others*, cited above, §§ 77-78). It sees no reason to depart from this conclusion. Accordingly, the Government’s preliminary objection must be dismissed.

60. The Court also considers that the applicant’s complaints under Articles 8 and 13 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

61. The Court notes that the systematic opening of the applicant’s letters was acknowledged by the Government in their observations in the present case (see paragraph 58 above). It further notes that it has frequently found violations of Article 8 of the Convention in Bulgarian cases concerning indiscriminate opening by the authorities of prisoners’ correspondence with their lawyers (see, among many others, *Radkov v. Bulgaria*, no. 27795/03, §§ 20-22, 22 April 2010, and *Konstantin Popov v. Bulgaria*, no. 15035/03, § 17, 25 June 2009).

62. It has also found that the monitoring of prisoners’ correspondence had not resulted from one individual decision taken by the authorities but directly from the application of the relevant legislation. However, it has concluded that there was no violation of Article 13 of the Convention because this provision does not guarantee a remedy allowing a Contracting State’s primary legislation to be challenged before a national authority (see *Petrov*, § 65, and *Konstantin Popov*, § 23, both cited above).

63. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach different conclusions in the present case. There has therefore been a violation of Article 8 and no violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

64. The applicant complained, relying on Article 34 of the Convention, that the monitoring of his correspondence had amounted to a hindrance in the effective exercise of his right of application. He also complained, relying on Articles 8 and 34 of the Convention, that he had not been allowed to contact his lawyer by phone. The Court considers that these complaints fall to be examined under Article 34 of the Convention, which reads, insofar as relevant, as follows:

“The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

65. The Government claimed that the authorities had not hindered the applicant’s correspondence with the Court and with his legal representatives in any way.

66. The Court can find no evidence that the applicant, who was able to communicate effectively with the Court following the introduction of his complaints, suffered any prejudice with regard to the presentation of his application or that he was in any way frustrated in the exercise of his right to submit his application.

67. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. ALLEGED VIOLATIONS OF ARTICLES 6 AND 13 OF THE CONVENTION

68. The applicant complained that the length of the criminal proceedings against him for theft had been incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention. Furthermore, relying on Article 13 of the Convention, he complained that he had not had any effective domestic remedies in this respect.

Article 6 § 1 reads, in so far as relevant:

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

Article 13 reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

69. The Government argued that the applicant had failed to exhaust all remedies available to him as he had not complained of the excessive length of the proceedings before the domestic authorities and had not initiated the use of the procedure under Article 239a of the CCP. They further stated that it had been open for the applicant to bring a compensation action under section 2 of the SMRDA.

70. The applicant disagreed.

71. The Court notes that the procedure under Article 239a of the CCP, which provides for the possibility for an accused to have his or her case brought to trial or obtain the discontinuance of the proceedings if the preliminary investigation is taking too long, was only applicable during the pre-trial stage. The bulk of the delay in the applicant's case, however, took place during the judicial phase of the proceedings. It further notes that in a number of judgments it has found that, apart from the above-mentioned remedy, there are no acceleratory or compensatory remedies in respect of the length of criminal proceedings in Bulgaria (see *Dimitrov and Hamanov v. Bulgaria*, cited above, §§ 92-96, with further references). In particular, it has expressly held that section 2 of the SMRDA was not such a remedy (*ibid.*, § 97). The Court sees no reason to hold otherwise in the present case.

72. The Government's objection of failure to exhaust the available domestic remedies is therefore dismissed.

73. The Court notes that the complaints under Articles 6 and 13 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

74. The Government argued that for the purposes of Article 6 of the Convention the criminal proceedings against the applicant had commenced on 16 February 2001, when the indictment against him had been submitted to the domestic court. They further argued that the length of the proceedings had not been unreasonable because the case had been complex.

75. The applicant contended that he had been informed of the criminal proceedings against him on 21 April 2000, when he had been placed in pre-trial detention.

76. The Court finds that in the present case the applicant's situation was "substantially affected" on 21 April 2000, when he was placed in pre-trial detention on suspicion of a number of car thefts (see paragraph 17 above, as well as *Foti and Others v. Italy*, 10 December 1982, §§ 52 and 53, Series A no. 56; and *Crowther v. the United Kingdom*, no. 53741/00, §§ 8 and 26, 1 February 2005).

77. The period ended on 6 April 2009, when the district prosecutor terminated the criminal proceedings against the applicant (see paragraph 25 above). It thus lasted nine years less fifteen days for a preliminary investigation and court proceedings at two levels of jurisdiction.

78. 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). It further reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

79. The Court has frequently found violations of Articles 6 § 1 and 13 of the Convention in cases raising issues similar to the one in the present case (see, among many others, *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, §§ 30 and 42, 23 September 2004, and *Kostov and Yankov v. Bulgaria*, no. 1509/05, §§ 21 and 27, 22 April 2010). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, the Court notes that the most significant delays were due to the repeated adjournment of the trial by the District Court and the remittal of the case. While the applicant was indeed responsible for several adjournments, the bulk of the delay in his case was due to reasons beyond his control, such as the non-appearance of witnesses, experts or even judges or jurors (see paragraphs 17-25 above).

80. As regards the existence of effective remedies capable of preventing the violation of Article 6 § 1 or its continuation, or providing adequate redress, the Court refers to its finding above (see paragraph 71 above) that there are no acceleratory or compensatory remedies in respect of the length of criminal proceedings in Bulgaria.

81. In view of the above and having regard to its case-law on the subject and the overall length of the proceedings, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement and that the applicant did not have effective remedies under domestic law in this respect.

82. There have accordingly been breaches of Articles 6 § 1 and 13.

V. THE REMAINDER OF THE APPLICANT’S COMPLAINTS

83. The applicant also complained, relying on Article 8 of the Convention, that following his transfer to Plovdiv Prison he had been placed in a cell together with a smoker, which had aggravated his asthma.

84. The Court notes that the applicant did not provide any information as to whether he had referred this complaint either to the prison administration or to the domestic courts. It is further noted that he was placed in an individual cell on 29 May 2009, some three months after he had been moved to Plovdiv Prison (see paragraph 7 above). Thus, seeing that the alleged interference only continued for a short period of time, nothing suggests that an action under the SMRDA could not have provided him with redress (see paragraph 46 above).

85. In view of the above, assuming that an issue may in principle arise under Article 8 of the Convention, this complaint must be declared inadmissible under Article 35 §§ 1 and 4 for failure to exhaust domestic remedies.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed non-pecuniary damage as follows: 30,000 euros (EUR) in respect of the breach of Article 3; EUR 10,000 in respect of Article 8; EUR 15,000 in respect of Article 6; and EUR 3,000 in respect of 13 of the Convention.

88. The Government contested this claim.

89. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the breaches of his rights found in the case. Taking into account all the circumstances of the case, and deciding on an equitable basis, the Court, recognising that the applicant was awarded the equivalent of approximately EUR 255 in the domestic proceedings (see paragraph 10 above), awards him EUR 7,000 under this head.

B. Costs and expenses

90. The applicant sought EUR 10,920 for 156 hours of legal work undertaken by his lawyers in the proceedings before the Court at the hourly rate of EUR 70. In support of this claim, he presented a contract and a time sheet. He further claimed EUR 160 for postage and copying expenses and EUR 263 for translation expenses. He presented a contract for translation. He requested that any award made by the Court under this head be made payable to his lawyers, Ms S. Stefanova and Mr M. Ekimdzhiev.

91. The Government considered that the claims were excessive.

92. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, and noting that part of the application was declared inadmissible, the Court considers it reasonable to award the sum of EUR 2,000. This sum is to be paid into the bank account of the applicant's representatives, Ms S. Stefanova and Mr M. Ekimdzhiev.

C. Default interest

93. 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* admissible the complaints concerning (a) the applicant's detention in allegedly inadequate conditions of detention at Varna Prison and the availability of an effective remedy in respect of those conditions, (b) the alleged interference with the applicant's correspondence by the prison administration and the availability of an effective remedy in that respect, and (c) the alleged excessive length of the criminal proceedings against the applicant and the availability of an effective remedy in that respect;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 3 of the Convention on account of the applicant's conditions of detention in Varna Prison;
4. *Holds* that there has been a violation of Article 13 in conjunction with Article 3 of the Convention;
5. *Holds* that there has been a violation of Article 8 of the Convention in respect of the monitoring of the applicant's correspondence with his lawyer;
6. *Holds* that there has been no violation of Article 13 in conjunction with Article 8 of the Convention;

7. *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;
8. *Holds* that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention;
9. *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 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representatives, Ms S. Stefanova and Mr M. Ekimdzhiev;
 - (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;
10. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President