CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF S.H.K. v. BULGARIA

(Application no. 37355/97)

JUDGMENT

STRASBOURG

23 October 2003

FINAL

23/01/2004

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

In the case of S.H.K. v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr E. LEVITS,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 2 October 2003,

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

PROCEDURE

1. The case originated in an application (no. 37355/97) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by, *inter alia*, a Bulgarian national, Mr S.H.K. ("the applicant"), on 9 April 1997.

2. The applicant was not legally represented. The Bulgarian Government ("the Government") were represented by their Agent, Mrs G. Samaras of the Ministry of Justice.

3. The applicant alleged, in particular, that the criminal proceedings which were brought against him in 1994 and were discontinued in 2002 had exceeded a reasonable time.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was originally allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). The President of the Chamber acceded to the applicant's request not to have his name disclosed (Rule 47 § 3).

6. By a decision of 20 April 1999 the Court (Fourth Section) declared the application partly inadmissible.

7. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). The case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

8. By a decision of 10 April 2003 the Court (First Section) declared the applicant's complaint about the length of the 1994-2002 criminal proceedings against him admissible and declared the remainder of the application inadmissible. It decided to dispense with a hearing.

9. The parties did not file observations on the merits.

THE FACTS

10. The applicant was born in 1946 and lives in Vratsa.

11. On 22 June 1994 criminal proceedings were opened against him for having threatened another person with murder.

A witness was questioned on 9 August 1994. Two other witnesses were questioned on 15 May and 25 June 1996.

12. The applicant was questioned as a witness on 23 August 1996. According to his submissions, it was only then that he became aware of the proceedings. On the same date the investigator in charge of the case commissioned a graphological expert to determine whether a threat note left in the victim's postal box had been written by the applicant. The expert's report was ready on 25 September 1996.

13. On 7 October 1996 the applicant was charged. He contested the authenticity of the threat note. On 21 October 1996 the investigator rejected this objection and on 22 October 1996 recommended that the applicant be committed for trial.

14. On 5 December 1996 the prosecution submitted to the Vratsa District Court an indictment against the applicant. On 15 January 1997 the judge to whom the case was assigned set it down for hearing.

15. On 1 April 1997 the applicant, who was involved in numerous proceedings together with his wife, requested the judge's withdrawal, because his wife had commenced a civil action against the judge for having insulted her in public. On 7 April 1997 the applicant's request was granted and the case was assigned to a new judge.

16. On 8 April 1997 the applicant requested that his case be examined by another court, arguing that all judges in the Vratsa District Court were “biased”. As a result of his request, on 14 May 1997 the case was transferred to the Biala Slatina District Court.

17. On 13 October 1997 the Biala Slatina District Court fixed a hearing for 13 March 1998.

18. On 20 January 1998 the applicant asked the court to reschedule the hearing, because on 13 March 1998 he had to attend a hearing in another case in a different town. The court rescheduled the hearing for 25 September 1998.

19. The hearing took place on 25 September 1998. The prosecutor asked the court to remit the case to the phase of the preliminary investigation, stating that the available evidence was not sufficient to sustain a finding of guilt and that certain witnesses had not been questioned. The court acceded to the request over the applicant's objection. The court's decision stated that it was subject to appeal before the Vratsa Regional Court.

20. On 5 October 1998 the applicant filed an interlocutory appeal against the remitting of the case. On 21 October 1998 he amended his appeal. On 5 November 1998 the Vratsa Regional Court declared the appeal inadmissible, holding that the lower court's decision to remit the case was not subject to appeal as it did not put an end to the criminal proceedings. On 9 November 1998 the applicant appealed against this decision to the Supreme Court of Cassation. On 12 January 1999 the Supreme Court of Cassation rejected the appeal.

21. The case file was then returned to the prosecution, which forwarded it to the investigation authorities on 22 March 1999 with instructions to question several witnesses. On 6 April 1999 the case was assigned to an assistant investigator.

22. On 30 July 2001 the applicant was charged anew.

23. On 5 September 2001 the investigator, having completed his work on the case, transmitted the file to the Vratsa District Prosecutor's Office.

24. On 11 October 2001 the Vratsa District Prosecutor's Office decided to discontinue the proceedings, finding that the relevant limitation period had expired in July 2001. On appeal by the applicant its decision was upheld by the Vratsa District Court on 3 December 2001, by the Vratsa Regional Court on 11 February 2002, and by the Supreme Court of Cassation on 11 July 2002.

THE LAW

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

25. The applicant complained about the length of the criminal proceedings against him. He relied on Article 6 § 1 which provides, as relevant:

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

The Government disputed this allegation, submitting that the proceedings in issue had not exceeded a reasonable time.

A. Period to be taken into consideration

26. The proceedings were opened on 22 June 1994. The applicant learned about them on 23 August 1996, when he was questioned as a witness. He was formally charged on 7 October 1996. The issue then arises which of those dates should be taken as the starting point of the period to be taken into consideration. Noting that the applicant became aware of the proceedings and the allegations against him on 23 August 1996, the Court takes this latter date as the date from which there was a "charge" within the meaning of Article 6 § 1 (see *Corigliano v. Italy*, judgment of 10 December 1982, Series A no. 57, p. 14, § 35 *in fine*).

27. As to the end of the proceedings, the relevant date was either 11 October 2001, when the prosecution decided to discontinue them (see *X v. the United Kingdom*, no. 8233/78, Commission decision of 3 October 1979, Decisions and Reports 17, p. 122, at pp. 133-34 and *Šleževičius v. Lithuania*, no. 55479/00, §§ 19, 20 and 27, 13 November 2001), or 11 July 2002, when the Supreme Court of Cassation finally disposed of the applicant's appeals against the discontinuation.

Having regard to its findings below, the Court considers that it is not necessary to determine this point and proceeds on the assumption that the relevant period ended on 11 October 2001.

28. The period to be taken into consideration thus lasted at least five years, one month and eighteen days.

B. Reasonableness of the length of the proceedings

29. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what was at stake for the applicant has also to be taken into account (see *Portington v. Greece*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2630, § 21 and *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

1. Complexity of the case

30. The Government contended that the case had been made complex by the numerous complaints and appeals filed by the applicant, as well as by his challenges to the judges. A further complicating circumstance was the need to assign the case to a new assistant investigator after its remitting.

31. The applicant submitted that the case was not complex.

32. The Court considers that, even though it concerned a serious offence – a murder threat – the case does not appear to have been particularly complex factually or legally. The procedural complexity

because of the need to transfer the case between different courts cannot explain the delay either (see *Styranowski v. Poland*, judgment of 30 October 1998, *Reports* 1998-VIII, pp. 3376-77, § 51).

2. Conduct of the applicant

33. According to the Government, the applicant had caused much of the delay through the manner in which he had exercised his procedural rights. More specifically, the applicant had waited for several months before making his challenges to the judges. Also, he had filed a clearly inadmissible appeal against the Biala Slatina District Court's decision to remit the case to the phase of the preliminary investigation, and had further appealed against the Vratsa Regional Court's decision declaring his appeal inadmissible.

34. The applicant disputed the allegation that he had been responsible for certain delays. In particular, he had filed interlocutory appeals against the remitting of the case to the preliminary investigation in order to speed up the proceedings.

35. The Court considers that the applicant's conduct and his challenges to the judges inevitably caused some delay. Also, one hearing had to be adjourned because he could not attend (see paragraph 18 above). However, it does not find that the applicant's conduct can explain the overall length of the proceedings.

3. Conduct of the authorities

36. The Government maintained that the authorities had acted diligently throughout the proceedings.

37. The applicant submitted that the authorities had been responsible for most, if not all, delays in the proceedings. He argued that the bulk of the delay had been caused by the lengthy intervals between the hearings and by the remitting of the case to the stage of the preliminary investigation.

38. The Court notes that certain intervals between hearings were lengthy (see paragraphs 17 and 18 above). The Court further notes that the prosecution, after having submitted an indictment to the court, itself requested that the case not be brought to trial in view of the insufficiency of the evidence. Also, it seems that the proceedings were practically dormant for more than two years between 6 April 1999, when the case was assigned to an assistant investigator, and 30 July 2001, when the applicant was charged anew.

4. Conclusion

39. The Court considers that the applicant's conduct is not in itself sufficient to justify the length of the proceedings. Although it is true that he may be responsible for some delay resulting from his requests for

withdrawals of the judges, the overall delay was essentially due to the way in which the authorities handled the case. Noting that the case, which was not particularly complex, was not even brought to trial for more than five years, the Court concludes that the length of the proceedings failed to satisfy the "reasonable time" requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 28,000 euros ("EUR") in compensation for pecuniary damage. He submitted, in particular, that he had been found guilty in another set of proceedings, that this was reflected in his criminal record, and that hence he had been unable to find work. He estimated that he would have earned the above amount if he had been paid the average salary for his profession (construction worker) during the period 1994 – 2002. The applicant further claimed reimbursement of the sums he had paid for a forensic expertise relating to a different set of proceedings and of the amount of the bail he had deposited within the framework of yet another set of proceedings.

42. The Government submitted that there was no causal link between the length of the proceedings against the applicant and his alleged impossibility to find work. They hence invited the Court to dismiss the claim for pecuniary damages.

43. The Court fails to see any causal link between the applicant's conviction and payment of sums of money in other sets of proceedings and the length of the proceedings at issue. Accordingly, the Court dismisses the claim under this head.

2. Non-pecuniary damage

44. The applicant sought EUR 42,000 in compensation for non-pecuniary damage due to the anxiety and distress he had experienced on account of the failure of the authorities to determine the criminal charge

against him within a reasonable time. He submitted that his reputation and his good name had been harmed as a result of the proceedings.

45. The Government maintained that the amount claimed by the applicant was overly elevated and without justification. In their view, the applicant's submissions as to the anxiety and distress he had experienced were farfetched and manifestly ill-founded. Moreover, a considerable part of them were not a direct consequence of the length of the proceedings against the applicant.

46. The Court considers that the applicant must indeed have sustained non-pecuniary damage. However, it notes that in cases of litigants who have contributed to the delay the award of compensation for non-pecuniary damage may be reduced (see *Solana v. France*, no. 51179/99, § 20, 19 March 2002). On this premise, having regard to the circumstances of the case, and making its assessment on an equitable basis, it awards EUR 1000 under this head.

B. Costs and expenses

47. The applicant claimed the reimbursement of 57 Bulgarian levs which he had paid for lawyer's fees and expenses. He did not specify whether the lawyer's services were related to the proceedings before the Court.

48. The Government did not comment on the applicant's claim.

49. The Court notes that the applicant was not legally represented. Accordingly, his claim for the reimbursement of lawyer's fees and expenses must be dismissed.

C. Default interest

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

FOR THESE REASONS, THE COURT UNANIMOUSLY

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

2. *Holds* that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 1000 (one thousand euros) in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

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

Done in English, and notified in writing on 23 October 2003, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Christos Rozakis
Deputy Registrar	President