CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SIDJIMOV v. BULGARIA

(Application no. 55057/00)

JUDGMENT

STRASBOURG

27 January 2005

FINAL

27/04/2005

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 Sidjimov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 6 January 2005,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 55057/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Valentin Kotzev Sidjimov ("the applicant"), on 28 July 1999.

2. The applicant was represented by Mr V. Stoyanov, a lawyer practising in Pazardjik. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that the criminal proceedings against him were unreasonably lengthy and that he had no effective remedy in this respect.

4. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court).

5. By a decision of 4 September 2003, the Court declared the application admissible.

6. The applicant's lawyer and the Government each filed additional observations.

7. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant was born in 1973 and lives in Pazardjik.

9. On 19 August 1993 he was arrested, charged with the rape of a minor and remanded in custody. Six other persons were also charged.

10. According to the indictment, the victim had been abducted by a Mr. A. and had been raped numerous times by several persons, some of whom had paid to Mr A. for having sex with the victim. Mr A. was charged with rape and acting as a procurer of prostitution. According to the applicant, all accused persons and the alleged victim are of Roma origin.

11. On unspecified dates an investigator interrogated the alleged victim and other accused persons and heard several experts.

12. In June 1994 the applicant and six other persons were indicted and the case listed for trial.

13. In September and October 1994 the trial court referred the case to the prosecutor in view of certain deficiencies in the investigation. On 17 February 1995 the applicant was released on bail.

14. In November 1995 the investigator concluded his work and submitted the file to the prosecutor.

15. In May 1996 the prosecutor ordered additional investigation. In June 1996 the investigator submitted the case to the prosecutor with the proposal that the applicant should be indicted.

16. In 1999 the applicant's lawyer lodged requests with the prosecuting authorities complaining of the length of the criminal proceedings.

17. On 27 February 2001, noting that the case had remained dormant since June 1996, a prosecutor ordered the resumption of the proceedings and referred the case to an investigator.

18. On 4 April 2002 the investigator objected, stating that in view of the lapse of time, the ensuing evidentiary difficulties and the workload of the investigation service it was preferable to terminate the proceedings.

19. The prosecutor did not accept the investigator's proposal and on 22 April 2002 ordered additional investigation.

20. It appears that as of November 2004 the proceedings were still pending.

II. RELEVANT DOMESTIC LAW

21. In June 2003 an amendment to the Code of Criminal Procedure, the new Article 239a, introduced the possibility for an accused person to have his case examined by a trial court if the investigation has not been

completed within the statutory time-limit (two years in investigations concerning serious crimes and one year in all other investigations).

III. THE PARTIES' STATEMENTS AS TO THE CONTINUATION OF THE PROCEEDINGS BEFORE THE COURT

22. By letter postmarked 17 December 2001 the applicant's lawyer stated that his client had informed him that he did not intend to pursue the application since his relatives and the persons with whom he stood co-accused feared "an adverse reaction by the State" if he maintained his application.

23. After the Court's admissibility decision the parties exchanged observations on the merits and on just satisfaction. The applicant's lawyer submitted that the Court should continue the examination of the case which disclosed a flagrant denial of justice. The Government objected.

24. On 24 November 2004 the applicant submitted a written declaration stating that he did not claim monetary compensation from the State, but insisted that the criminal proceedings against him should be terminated, as he had already suffered a lot. He also stated that he left the issue of costs at the Court's discretion.

THE LAW

I. THE GOVERNMENT'S POSITION THAT THE APPLICATION SHOULD BE STRUCK OUT OF THE LIST OF CASES

25. The Government, relying on Article 37 § 1 (a) of the Convention, asked the Court to strike the case out of its list of cases stating that the applicant no longer wished to pursue his application and that no undue pressure had been brought to bear on him.

26. Article 37 § 1 of the Convention reads:

> "The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; or
>
> (b) the matter has been resolved; or
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

27. The Court notes that the applicant's statement of December 2001 that he wished to withdraw his application was accompanied by the explanation that he feared adverse consequences if he maintained the application.

28. The applicant's statement that he did not wish to pursue his application was therefore ambiguous.

29. The Court also notes that the criminal proceedings against the applicant have lasted more than eleven years and that they are still pending at the investigation stage. In 2002 the investigator considered that it was preferable to terminate the proceedings but the prosecutor disagreed and ordered their continuation (see paragraphs 17-20 above).

30. Finally, the Court observes that in November 2004 the applicant submitted a written declaration from which it can be deduced that he wishes to pursue the application.

31. Having regard to the above circumstances the Court considers that it has not been established that the applicant genuinely wished to withdraw his application. It follows that the Government's request that the application should be struck out of the list must be rejected.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

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

33. The Government stated that the charges against the applicant concerned a serious crime, that the case was complex and that after June 1996 the applicant had not suffered any inconvenience as "*de facto* he had not been treated as an accused person".

34. The Court notes that the criminal proceedings against the applicant began in August 1993 and that as of November 2004 they were apparently still pending. The period under consideration is thus more than eleven years. A delay of nearly two years imputable to the authorities accumulated between June 1994 and June 1996, when the case was repeatedly referred to the investigation stage. Since June 1996 the proceedings have been dormant (see paragraphs 9-20 above).

35. The Court considers that the alleged complexity of the case cannot explain the complete failure of the authorities to proceed with its examination. That failure is particularly serious in view of the fact that the

case concerns rape charges in the context of alleged repeated rapes of a minor, abducted and forced to prostitute.

36. Having regard to the criteria established in its case-law for the assessment of the reasonableness of the length of proceedings (see, among many others, *Pélissier and Sassi v. France* [GC], no. 25444/94, ECHR 1999-II; and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, 17 December 2004), the Court finds that the length of the criminal proceedings against the applicant failed to satisfy the reasonable time requirement of Article 6 § 1 of the Convention. There has been, therefore, a violation of that provision.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant complained that he did not have an effective remedy in relation to the excessive length of the criminal proceedings against him and relied on Article 13 of the Convention, which provides:

> "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."

38. Remedies available to a litigant at domestic level for raising a complaint about the length of proceedings are "effective", within the meaning of Article 13, if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI). Article 13 therefore offers an alternative: a remedy will be considered "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the litigant with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

39. Having regard to its conclusion in respect of the applicant's complaints under Article 6 § 1 (see paragraph 36 above), the Court is of the view that the complaints were arguable. The Court must therefore determine whether, in the particular circumstances of the present case, there existed in Bulgarian law any means for obtaining redress in respect of the length of the proceedings.

40. The Court notes that in June 2003 an amendment to the Code of Criminal Procedure, the new Article 239a, introduced the possibility for an accused person to have his case brought before the trial court if the investigation has not been completed within a certain statutory time-limit (see paragraph 21 above). However, even assuming that after June 2003 the applicant could make use of the new remedy, any acceleration of the proceedings at that moment would have come too late to make up for the excessive delay already accumulated. In these circumstances the Court does

not consider it necessary to rule in the abstract whether the new Article 239a is an effective remedy for the purposes of Article 13 of the Convention (see, *mutatis mutandis*, *Djangozov v. Bulgaria,* no. 45950/99, § 52, 8 July 2004).

41. As the Court found in its *Osmanov and Yuseinov v. Bulgaria* judgment (nos. 54178/00 and 59901/00, §§ 38-42, 23 September 2004) at the relevant time there was no formal remedy under Bulgarian law that could have expedited the determination of the criminal charges against the applicant. In particular, the possibility to complain to the various levels of the prosecution authorities cannot be regarded as an effective remedy because such hierarchical complaints aim to urge the authorities to utilise their discretion and do not give the accused a personal right to compel the State to exercise its supervisory powers (see *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82, p. 76, at p. 82, *Kuchař and Štis v. Czech Republic* (dec.), 37527/97, 23 May 2000, *Horvat v. Croatia*, no. 51585/99, §§ 47 and 64, ECHR 2001-VIII and *Hartman v. Czech Republic*, no. 53341/99, § 66, ECHR 2003-VIII (extracts)).

42. Furthermore, as regards compensatory remedies, the Court has not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings.

43. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. In November 2003 and January 2004 the applicant's lawyer submitted on behalf of his client a claim for non-pecuniary damages, to which the Government objected. Thereafter, in November 2004 the applicant declared that he did not claim damages.

46. The Court takes note of the applicant's declaration of November 2004 and does not make an award in respect of any damage that the applicant might have suffered.

B. Costs and expenses

47. The applicant's lawyer claimed EUR 3,500 in legal fees. He stated that he had prepared the initial application and had submitted observations on the admissibility and merits under the expectation to be paid later by the applicant, who had insufficient resources.

48. The lawyer also requested that any award in respect of costs and expenses be paid directly to him.

49. In November 2004 the applicant stated that he leaves the issue of costs to the Court's discretion.

50. The Government stated that following the applicant's decision to withdraw his application, his lawyer was not entitled to claim costs and that his claims were therefore immoral. The Government also noted that the applicant's lawyer had not presented a time sheet or other documents justifying his claim. In their view, in accordance with the average rates in Bulgaria, the lawyer's fee should not exceed EUR 300.

51. The Court observes that the applicant's lawyer prepared the application and submitted observations in the case and thus did legal work which was necessary for the representation of his client, apparently on the basis of an understanding between them that the applicant would pay an unspecified amount when possible. The Court considers that in these circumstances an award in respect of legal fees is appropriate. However, the applicant's lawyer has not presented a time-sheet or other documents in this respect. Having regard to all relevant factors, the Court awards EUR 1,500 in respect of costs and expenses, payable into the bank account of the applicant's lawyer.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Dismisses* the Government's request that the application be struck out of the list of cases;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of the length of the criminal proceedings against the applicant;

3. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1;

4. *Holds*
   (a) 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, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria;

(ii) any tax that may be chargeable on the above amount;

(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 27 January 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President