



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

FIFTH SECTION

CASE OF KARAGYOZOV v. BULGARIA

(Application no. 65051/01)

JUDGMENT

STRASBOURG

25 October 2007

FINAL

25/01/2008

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 Karagyozev v. Bulgaria,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr V. BUTKEVICH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 2 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 65051/01) 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 Veselin Asenov Karagyozev ("the applicant"), on 7 December 2000.

2. The applicant was represented by Mr M. Ekimdjev and Mrs S. Stefanova, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Karadjova, of the Ministry of Justice.

3. On 13 October 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

4. The applicant was born in 1960 and lives in Plovdiv.

A. The preliminary investigation

5. On 20 June 1997 the applicant and five other persons were charged with theft and questioned. The charges concerned the theft from a warehouse of 310 kg of nickel worth approximately 3,000 US dollars. The applicant was ordered not to leave his place of residence without authorisation from the Prosecutor's Office.

6. On 20 June, 17 July and 3 September 1997 witnesses were questioned. On 29 July 1997 the investigator carried out a confrontation between the applicant and another co-accused. Between July and October 1997 he ordered a fingerprint expert report, a report on the value of the stolen objects and a psychiatric expert report. The reports were submitted in October 1997. On 24 October 1997 the proceedings were terminated with respect to one of the co-accused on grounds of his mental disease.

7. In April and May 1998 the investigator made modifications to the charges. The applicant and the other accused persons were informed of the new charges and questioned. On 10 April 1998 another psychiatric expert report on the mental condition of the co-accused Mr M. was ordered. The report was submitted on 27 April 1998.

8. The results of the preliminary investigation were presented to the applicant on 26 May 1998. The case file was transmitted to the Plovdiv District Prosecutor's Office on 29 May 1998.

9. On 21 July 1998 the Plovdiv District Prosecutor's Office submitted to the Plovdiv District Court a bill of indictment against the applicant and two other persons (Mr D. and Mr G.). The prosecutor also issued a decision terminating the proceedings against the other persons involved. Mr G.'s ensuing appeal was never examined.

B. The trial

10. The first hearing of the Plovdiv District Court, scheduled for 5 October 1998, was adjourned because Mr D., one of the co-accused, had not received a copy of the bill of indictment prior to the hearing.

11. The hearing listed for 16 November 1998 was adjourned because one of the co-accused, Mr. G., had fallen ill and three witnesses had not been duly summoned.

12. The hearing scheduled for 11 January 1999 failed to take place because the applicant's counsel had to attend another court hearing and the co-accused Mr D. had not retained a lawyer.

13. The hearing listed for 25 February 1999 was adjourned because the co-accused Mr D. had fallen ill.

14. A hearing was held on 30 April 1999. The court heard Mr D. and a witness. The court granted the accused persons' requests for the collection of evidence.

15. On 30 June 1999 the court admitted expert evidence and adjourned the hearing because the one of the co-accused persons, Mr D., had been admitted to hospital.

16. On 30 September 1999 the court heard witnesses and admitted expert evidence. Upon the request of all parties, the prosecutor and the accused persons, the court ordered a new report on the value of the stolen objects.

17. On 15 December 1999 the court, sitting in private, adjourned the hearing listed for December 1999 because a lay judge had been busy with other matters and could not attend.

18. The hearing listed for 22 March 2000 failed to take place because Mr D.'s counsel had not been summoned and did not appear. The court also observed that the expert report had been prepared by two experts instead of three and ordered the rectification of this deficiency.

19. The hearing scheduled for 19 May 2000 was adjourned because of a change in the composition of the court. Pursuant to Article 257 § 2 of the Code of Criminal Procedure the examination of the case had to restart.

20. The hearing listed for 14 September 2000 failed to take place because one of the co-accused, Mr D., did not appear. The court put him on bail and ordered that he should be brought by force for the next hearing.

21. Mr D. did not appear at the hearings of 17 November 2000, 14 February 2001 and 4 May 2001 and they were adjourned. The court sought from the local police explanation for their failure to secure Mr D.'s attendance. On 4 May 2001 the court issued an order for Mr D.'s remand in custody. He was arrested on an unspecified date.

22. The applicant's and Mr D.'s counsels were unable to attend the hearing of 4 October 2001 and it was adjourned.

23. The hearing scheduled for 21 January 2001 failed to take place because Mr D. had not been brought from the Plovdiv prison.

24. On 10 April 2002 the counsels of the accused requested that the case be remitted to the prosecution authorities for the rectification of serious procedural deficiencies which had occurred at the pre-trial stage. The court adjourned the hearing and requested additional documents from the Plovdiv Regional Prosecutor's Office.

25. On 20 September 2002 the court held a hearing. It found that the rights of the accused persons had been adversely affected by the fact that Mr G.'s appeal against the prosecutor's decision of July 1998 partly terminating the proceedings had not been examined prior to the indictment. Accordingly, the case was remitted to the Plovdiv District Prosecutor's Office.

26. On 7 July 2003 the Plovdiv District Prosecutor's Office prepared a new bill of indictment and submitted it to the Plovdiv District Court on 8 August 2003.

27. The hearings scheduled for 12 March and 27 September 2004 were adjourned because the victim had not been properly summoned, the applicant's counsel had withdrawn and an *ex officio* counsel had to be appointed by the court, and also because Mr G.'s counsel and a witness did not appear. The court imposed fines and sought information and police assistance.

28. On 1 February 2005 the court held a hearing. It admitted expert evidence and questioned witnesses and experts. The court furthermore dismissed the request of Mr G.'s counsel to remit the case to the investigation stage because of allegedly unclear wording of the bill of indictment.

29. The next hearing was scheduled for 9 May 2005. It did not take place because witnesses failed to appear.

30. The hearing listed for 29 September 2005 could not take place as the applicant had not been duly summoned and did not appear.

31. On 3 November 2005 the court heard witnesses and experts who had submitted reports. As some of the witnesses had not appeared and their testimony was considered of significant importance, the court adjourned the hearing.

32. On 21 December 2005 the hearing was adjourned as Mr G. had fallen ill.

33. As of 20 March 2006 the case was still pending before the Plovdiv District Court.

THE LAW

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

34. The applicant complained that the length of the proceedings 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...”

35. The Government contested that argument.

36. The period to be taken into consideration began on 20 June 1997 and as of 20 March 2006, the date of the latest information received by the Court, had not yet ended. It has thus lasted on that latter date eight years and nine months for one level of jurisdiction.

A. Admissibility

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

B. Merits

38. 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, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

39. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above and *Vasilev v. Bulgaria*, no. 59913/00, 2 February 2006).

40. 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. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the “reasonable time” requirement.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

41. The applicant further complained of the fact that in Bulgaria there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention.

42. The Government contested that argument, stating that the applicant had never declared before the District Court that he wished to have the case examined speedily.

43. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

44. The Court 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).

45. Having regard to the fact that the Government have not argued that such a remedy existed in Bulgarian law, the Court considers that in the present case there has been a violation of Article 13 of the Convention on

account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling upholding his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

46. 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

47. The applicant claimed 9,000 euros (EUR) in respect of non-pecuniary damage. He argued, *inter alia*, that in cases concerning Bulgaria the Court should take into account the fact that the annual gross domestic product, the minimum salary and living standards had increased significantly in recent years.

48. The Government did not express an opinion on the matter.

49. The Court awards the applicant EUR 4,000 in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicant also claimed EUR 3,080 in respect of legal fees for 44 hours of legal work on the case before the Court and EUR 55 in respect of postal and overhead expenses (EUR 3,135 in total). He submitted copies of a legal fees agreement and a time sheet.

51. The Government did not express an opinion on the matter.

52. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 1,200 covering costs and expenses.

C. Default interest

53. 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* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 13 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,000 (four thousand euros) in respect of non-pecuniary damages and EUR 1,200 (one thousand two hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;
 - (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 25 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President