



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

FIFTH SECTION

CASE OF KARMO v. BULGARIA

(Application no. 76965/01)

JUDGMENT

STRASBOURG

6 December 2007

FINAL

06/03/2008

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 Karmo 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. BUTKEVYCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr R. MARUSTE,

Mr M. VILLIGER, *judges*

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 13 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 76965/01) 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 Syrian national, Mr Hisham Ibrahim Karmo (“the applicant”), on 16 August 2001.

2. The applicant was represented by Mr V.G. Kaludin, a lawyer practising in Sofia.

3. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

4. On 9 February 2006 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the criminal proceedings 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**

5. The applicant was born in 1969 and is serving a sentence of life imprisonment in Bulgaria.

The criminal proceedings against the applicant

6. In the early hours of 7 October 1993 a taxi driver was murdered and his car was stolen. The applicant was arrested by the police on the same morning while cleaning the taxicab from blood stains. A preliminary investigation for murder was opened against the applicant on the same day.

7. The preliminary investigation lasted from 7 October 1993 to 10 February 1994 during which period the investigation authorities questioned on several occasions the applicant and various witnesses, conducted crime scene experiments and commissioned a number of expert reports such as a medical, fingerprint, economic, psychiatric, chemical and compound-analysis report.

8. The findings of the preliminary investigation were presented to the applicant on 7 March 1994.

9. An indictment was submitted to the Sofia City Court on 22 June 1994 against the applicant for the murder of the taxi driver and for the theft of the taxicab and several items from another individual.

10. The Sofia City Court conducted eight hearings between 2 November 1994 and 12 March 1996. The victim's son joined the proceedings as civil claimant. In the course of the proceedings, the court examined the applicant and various witnesses, some of which were foreign language speaking, and commissioned several expert reports, such as a physicochemical, chemical, ballistics, psychiatric and economic. One of the members of the court's panel was changed midway in the proceedings which led to a rehearing of the case, as well as a re-examination of witnesses and experts. There were also unsuccessful attempts to locate two witnesses who had left the country in 1993.

11. In a judgment of 12 March 1996 the Sofia City Court found the applicant guilty of premeditated murder with hooligan motives, committed with extreme viciousness and in a manner particularly cruel to the victim, as well as of the theft of the taxicab and several items from another individual. The court imposed the death penalty as joint punishment for the offences and ordered the applicant to pay damages to the victim's family.

12. The applicant appealed against the above judgment on 14 March 1996 arguing that the Sofia City Court had wrongly applied the law, that the facts were inconclusive and that the sentence was unjustified. His appeal was forwarded to the second-instance court more than a year later on 14 April 1997.

13. The Supreme Court of Cassation conducted three hearings between 13 June 1997 and 12 March 1998.

14. In a judgment of 17 April 1998 the Supreme Court of Cassation upheld the first-instance court's judgment, but reduced the sentence to life imprisonment as it found it to be more lenient for the applicant. In reaching

its decision, the court re-examined all the evidence before it and addressed the arguments of the applicant.

15. On 25 May 1998 the applicant filed a petition for review (cassation appeal) essentially repeating his arguments before the second-instance court.

16. Of the six hearings held before the extended panel of the Supreme Court of Cassation between 16 December 1998 and 19 February 2001 three were adjourned at the applicant's request.

17. In a final judgment of 12 March 2001 the extended panel of the Supreme Court of Cassation dismissed the applicant's appeal and upheld the lower-courts' judgements. In reaching its decision, the court concurred with the findings of the lower courts, found them to be supported by the evidence in the case and to be well reasoned, and dismissed the applicant's arguments as unsubstantiated.

THE LAW

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

18. 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...”

19. The Government contested that argument.

20. The period to be taken into consideration began on 7 October 1993 and ended on 12 March 2001. It thus lasted 7 years, 5 months, 6 days for three level of jurisdiction.

A. Admissibility

21. The Court notes that 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

22. 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)

23. Having examined all the material before it and noting the parties' submissions, the Court considers that the case was not particularly complex and that there were no significant delays attributable to the applicant as only three of the seventeen hearings conducted before the domestic courts were adjourned at his request (see paragraph 16 above). On the other hand, midway in the proceedings before the Sofia City Court one of the members of the court's panel was changed which led to a rehearing of the case, as well as a re-examination of witnesses and experts (see paragraph 10 above). In addition, the applicant's appeal of 14 March 1996 was forwarded to the Supreme Court of Cassation more than a year later on 14 April 1997 (see paragraph 12 above). The Court finds that no facts or arguments capable of persuading it that the length of the criminal proceedings in the present case was reasonable have been put forward. Thus, 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 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 50,000 euros (EUR) as compensation for the non-pecuniary damage arising out of the alleged violation of the applicant's rights under the Convention. He claimed to have felt frustration, anguish and despair as a result of the length of the criminal proceedings and that he was held in inadequate conditions of detention during the period.

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

27. The Court considers that the applicant had undoubtedly suffered non-pecuniary damage as a result of the criminal proceedings against him having lasted over seven years. Having regard to the circumstances of the present case, its case-law in similar cases and deciding on an equitable basis

the Court awards EUR 1,200 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

28. The applicant claimed 167 Bulgarian leva (BGN: approximately EUR 86) for translation costs and BGN 23.56 (approximately EUR 12) for postal expenses, which were supported by appropriate invoices and receipts. No claim was made for the legal work by the applicant's lawyer on the proceedings before the Court.

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

30. 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 that the sum claimed should be awarded in full.

C. Default interest

31. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *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, the following amounts:
 - (i) EUR 1,200 (one thousand two hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into Bulgarian leva at the rate applicable on the date of settlement;
 - (ii) EUR 98 (ninety eight euros) in respect of costs and expenses;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate

equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 6 December 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President