



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF YANKOV AND MANCHEV v. BULGARIA

(Applications nos. 27207/04 and 15614/05)

JUDGMENT

STRASBOURG

22 October 2009

FINAL

22/01/2010

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 Yankov and Manchev v. Bulgaria,

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

Peer Lorenzen, *President*,
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 September 2009,

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

PROCEDURE

1. The case originated in two applications (nos. 27207/04 and 15614/05) 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 two Bulgarian nationals, Mr Dimitar Simeonov Yankov and Mr Stoyan Ivanov Manchev (“the applicants”), on 13 July 2004 and 7 April 2005 respectively.

2. The applicants were represented by Ms S. Stefanova and Mr A. Atanasov, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agents, Ms N. Nikolova and Ms R. Nikolova, of the Ministry of Justice.

3. The President of the Fifth Section decided to give notice of the applications to the Government on 16 and 17 June 2008 respectively. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 3 of the Convention).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1971 and 1960 respectively and live in village of Stryama, the Plovdiv region.

A. The proceedings against Mr Yankov

5. On 21 January 1995 criminal proceedings were opened against an unknown perpetrator in respect of the theft of two sheep and a lamb. On 27 January 1995 the police took a statement from Mr Yankov in which he confessed to taking part in the commission of the offence.

6. On 24 February 1995 the investigation against an unknown perpetrator was transformed into an investigation against Mr Yankov and two other individuals.

7. From April 1995 until October 2001 the case remained dormant. In October 2001 the authorities started working on it. On 7 November 2001 Mr Yankov was charged. The investigation was completed in February 2002, and Mr Yankov was indicted on 15 July 2002.

8. The first hearing, listed for 2 July 2003, was adjourned because certain witnesses and an expert were absent. It took place on 29 January 2004. The Plovdiv District Court approved a plea agreement between Mr Yankov and the prosecution and terminated the proceedings. The applicant was sentenced to one year's imprisonment, suspended.

B. The proceedings against Mr Yankov and Mr Manchev

9. On 4 September 1993 the police received a complaint that six sheep had been stolen. The following day, 5 September 1993, they took statements from Mr Manchev and Mr Yankov in which the applicants confessed to taking part in the commission of the offence.

10. On 19 October 1993 a preliminary investigation was opened against the applicants and two other individuals on charges of theft.

11. Between November 1993 and November 2001 the case remained dormant. In November 2001 the authorities started working on it. Mr Yankov and Mr Manchev were charged on 16 and 19 November 2001 respectively. In December 2003 the investigation was completed, and the applicants were indicted in January 2004.

12. At the first hearing, held on 27 October 2004, the Plovdiv District Court approved a plea agreement between the applicants and the prosecution and terminated the proceedings. Each of the applicants was sentenced to one year's imprisonment, suspended.

THE LAW

I. PRELIMINARY REMARK

13. Noting that the two applications are based on similar facts and contain identical complaints, the Court considers it appropriate to join them (Rule 42 (former 43) § 1 of the Rules of Court).

II. ALLEGED VIOLATIONS OF ARTICLE 6 OF THE CONVENTION

14. The applicants complained of the excessive length of the criminal proceedings against them. They relied on Article 6 § 1 of the Convention, which, in so far as relevant, provides:

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

15. The Government contested this allegation.

16. The Court considers that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, or inadmissible on any other grounds. They must therefore be declared admissible.

A. The proceedings against Mr Yankov

17. The parties were in dispute as to the starting point of the period to be taken into account. The Government considered that this was 15 November 2001, when Mr Yankov had been formally charged, because before that the proceedings had not been directed against him and he had not suffered any detriment. The applicant was of the view that the relevant date was 27 January 1995, when he had made a statement in relation to the offence and had confessed to taking part in its commission.

18. According to the Court's case-law, the word “charge” in Article 6 § 1 must be interpreted as having an autonomous meaning in the context of the Convention and not on the basis of its meaning in domestic law. The prominent place held in a democratic society by the right to a fair trial favours a substantive, rather than a formal, conception of “charge”; it requires the Court to look behind the appearances and examine the realities of the procedure in question (see *Deweert v. Belgium*, 27 February 1980, § 44, Series A no. 35, and *Adolf v. Austria*, 26 March 1982, § 30, Series A no. 49). Applying these principles to the situation before it, the Court finds that Mr Yankov was subject to a “charge” from the moment when the police took a statement from him in which he confessed to taking part in the commission of the offence, that is, 27 January 1995 (see *Howarth v. the*

United Kingdom, no. 38081/97, §§ 8, 9 and 20, 21 September 2000, and *Martins and Garcia Alves v. Portugal*, no. 37528/97, §§ 9, 10 and 20, 16 November 2000).

19. The end point is not in contention, namely 29 January 2004, when the trial court approved the plea agreement between Mr Yankov and the prosecution and terminated the proceedings. Accordingly, the period to be taken into consideration lasted a little more than nine years for a preliminary investigation and one level of court.

20. The reasonableness of this period must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law: the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Howarth*, § 25, and *Martins and Garcia Alves*, § 22, both cited above).

21. The Court does not consider that the case was complex. Nor does it appear that Mr Yankov's conduct was at the origin of any delays. The major source of delay was the lack of any activity in the case between February 1995 and October 2001. The Government have not provided any explanation for this gap.

22. The Court concludes that the charges against Mr Yankov were not determined within a "reasonable time", in breach of Article 6 § 1 of the Convention.

B. The proceedings against Mr Yankov and Mr Manchev

23. The parties did not agree on the starting point of the period to be taken into consideration.

24. For the same reasons as set out above in respect of the proceedings against Mr Yankov, the Court accepts that Mr Yankov and Mr Manchev were subject to a "charge" from 5 September 1993, when the police took statements from them in which they confessed to taking part in the commission of the offence. The proceedings came to an end on 27 October 2004, when the trial court approved a plea agreement between the applicants and the prosecution. The period to be taken into consideration was therefore eleven years and almost two months for a preliminary investigation and one level of court.

25. The Court does not consider, in light of the criteria set out in paragraph 20 above, that this amount of time was reasonable. The case was not complex and the applicants did cause any delays. The main reason why the charges against them were not determined for such a long time was the fact that between November 1993 and November 2001 the case remained dormant. The Government have not provided any explanation for this gap.

26. There has therefore been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

27. The applicants complained that they did not have effective remedies in respect of the excessive length of the proceedings against them. They relied on Article 13 of the Convention, which provides as follows:

“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.”

28. The Government contested this allegation.

29. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, or inadmissible on any other grounds. It must therefore be declared admissible.

30. Article 13 guarantees an effective remedy in respect of an arguable complaint of a breach of the requirement of Article 6 § 1 to hear a case within a reasonable time (see *Kudla v. Poland* [GC], no. 30210/96, §§ 146-57, ECHR 2000-XI). A remedy is effective if it prevents the alleged violation or its continuation or provides adequate redress for any breach that has already occurred (ibid., § 158, and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII).

31. Having regard to its conclusions in paragraphs 22 and 26 above, the Court is satisfied that the applicants' complaints were arguable.

32. The Court has previously found that until 2003 Bulgarian law did not provide remedies allowing those accused in criminal proceedings to expedite the determination of the charges against them (see *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, §§ 38-40, 23 September 2004; *Sidjimov v. Bulgaria*, no. 55057/00, § 41, 27 January 2005; *Nalbantova v. Bulgaria*, no. 38106/02, § 34, 27 September 2007; and *Atanasov and Ovcharov v. Bulgaria*, no. 61596/00, § 56, 17 January 2008). It is true that after a reform of the 1974 Code of Criminal Procedure in June 2003, it became possible for the accused to request to have their cases brought before a court if the preliminary investigation had not been completed within a certain time-limit. However, any acceleration of the proceedings against the applicants after June 2003 could not have possibly made up for the delays which had already accumulated by that time (see *Sidjimov*, § 40; *Atanasov and Ovcharov*, §§ 57 and 58, both cited above; and *Gavazov v. Bulgaria*, no. 54659/00, §§ 164 and 165, 6 March 2008).

33. As regards compensatory remedies, the Court has not found it established that under Bulgarian law there exists an avenue allowing the accused to obtain damages or other redress in respect of the excessive length of criminal proceedings against them (see *Osmanov and Yuseinov*, § 41; *Sidjimov*, § 42; *Nalbantova*, § 35; *Atanasov and Ovcharov*, §§ 59 and 60; and *Gavazov*, § 166, all cited above; see also *Staykov v. Bulgaria*, no. 49438/99, § 89 *in fine*, 12 October 2006).

34. There has therefore been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. Mr Yankov claimed 8,000 euros (EUR) in respect of the non-pecuniary damage sustained as a result of the unreasonable length of the proceedings against him. He further claimed EUR 10,000 in respect of the non-pecuniary damage sustained as a result of the proceedings against him and Mr Manchev. Mr Manchev claimed EUR 10,000 under this head. Mr Yankov additionally claimed EUR 10,000 for the non-pecuniary damage suffered as a result of the lack of effective remedies against the excessive length of the proceedings. Mr Manchev claimed EUR 5,000 under this head.

37. The Government contested these claims.

38. The Court considers that the applicants must have suffered certain non-pecuniary damage as a result of the excessive length of the proceedings against them and the lack of effective remedies in this respect. Taking into account the particular circumstances and the awards made in similar cases (see, for instance, *Myashev v. Bulgaria*, no. 43428/02, § 27, 8 January 2009), and ruling on an equitable basis, as required under Article 41, the Court awards Mr Yankov EUR 3,000 and Mr Manchev EUR 2,000, plus any tax that may be chargeable.

B. Costs and expenses

39. The applicants sought the reimbursement of EUR 5,140 incurred in lawyers' fees for the proceedings before the Court, and of EUR 310 for other expenses. They asked that any award under this head be made directly payable to their lawyers, Ms S. Stefanova and Mr A. Atanasov.

40. The Government contested these claims.

41. According to the Court's case-law, applicants are entitled to the reimbursement of 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, regard being had to the information in its possession and the above criteria, and to the fact that the applicants were represented by the same lawyers, the Court considers it reasonable to award them jointly EUR 1,500, plus any tax that may be chargeable to them. This sum is to be paid into the bank account of their legal representatives, Ms S. Stefanova and Mr A. Atanasov.

C. Default interest

42. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings against Mr Yankov;
4. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the proceedings against Mr Yankov and Mr Manchev;
5. *Holds* that there has been a violation of Article 13 of the Convention;
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from 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 at the date of settlement:
 - (i) to Mr Yankov, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) to Mr Manchev, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) jointly to both applicants, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to them, in respect of costs and expenses, to be paid into the bank account of their legal representatives, Ms S. Stefanova and Mr A. Atanasov;
 - (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;
7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 22 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President