



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

FIFTH SECTION

CASE OF FILIPOV v. BULGARIA

(Application no. 40495/04)

JUDGMENT

STRASBOURG

10 June 2010

FINAL

10/09/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Filipov 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,
 Mark Villiger,
 Mirjana Lazarova Trajkovska,
 Zdravka Kalaydjieva, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 18 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 40495/04) 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 Dimitar Petrov Filipov (“the applicant”), on 4 November 2004.

2. The applicant was represented by Mr M. Ekimdzhev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. The applicant alleged, in particular, that his pre-trial detention and the criminal proceedings against him had been unreasonably lengthy.

4. On 7 April 2009 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the length of the applicant's detention, the length of the criminal proceedings against him and the lack of effective remedies in respect of the length of the proceedings. It also decided to examine the merits of the remainder of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975 and lives in Plovdiv.

1. The criminal proceedings against the applicant

6. On 22 July 2000 the applicant and another person were charged with extortion. The investigation continued until 7 June 2001, when the prosecution filed an indictment against them with the Plovdiv Regional Court for extortion, illegal possession of firearms and handling of stolen goods.

7. The Plovdiv Regional Court conducted seventeen hearings, which were scheduled at intervals of one to five months, with the two last hearings being scheduled at an interval of eight months. Four of the hearings were adjourned as the applicant or his counsel failed to attend, while another three were adjourned on request by the other accused or the victim.

8. On 9 January 2006 the Plovdiv Regional Court convicted the applicant as charged and sentenced him to five years' imprisonment. No appeal was lodged against that judgment and it became final.

2. The applicant's detention

9. The applicant was held in detention from 25 July 2000 to 5 November 2001 and then from 2 January to 6 October 2002, when he was released on bail.

10. On 10 September 2003 the applicant failed to attend a court hearing. On 12 September 2003 he was arrested in another city under an arrest warrant issued in another set of proceedings several months earlier, after on 26 June 2003 he had been declared a fugitive.

11. On 10 October 2003 the Plovdiv Regional Court ordered that the applicant be placed in detention because his absence at the hearing of 10 September 2003 had not been justified. On 5 November 2003 that decision was upheld by the Plovdiv Court of Appeal.

12. The applicant's detention continued until 9 November 2005, when the Plovdiv Regional Court discontinued it, taking into account the fact that the applicant had been sentenced to a term of imprisonment in another set of criminal proceedings.

13. The applicant requested release on six occasions between 5 November 2003 and 9 November 2005. The Plovdiv Regional Court and the Plovdiv Court of Appeal dismissed his requests and ensuing appeals finding that: 1) he had been charged with serious offences, and 2) there was a risk of him absconding or reoffending as there were other criminal proceedings pending against him and he had earlier convictions, and also because he had once failed to attend a hearing and had been declared a fugitive (see paragraph 10 above).

14. The courts dismissed the applicant's argument that he had health problems, pointing out, on the basis of the opinion of medical doctors, that he could be treated adequately in prison. To another argument raised by the applicant, namely that his family was in a dire financial situation, the courts

responded that the other members of the family, namely his mother and his brother, were capable of taking care of themselves. As to the argument that the applicant's detention had lasted too long, the courts responded that the case was already at the trial stage and that hearings were being scheduled at reasonable intervals.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. The relevant domestic provisions of the 1974 Code of Criminal Procedure, in force at the relevant time, concerning grounds for detention and requests for release during the trial have been summarised in the Court's judgments in the cases of *Dobrev v. Bulgaria* (no. 55389/00, §§ 32-33, 10 August 2006) and *Bochev v. Bulgaria* (no. 73481/01, §§ 32-36, 13 November 2008).

16. Under the 1988 State and Municipalities Responsibility for Damage Act ("the SMRDA") individuals can in certain circumstances seek damages for unlawful acts of the authorities. The Act does not mention excessive length of proceedings as a ground for an action for damages. Nor is there any practice in the domestic courts of awarding damages for excessive length of proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

17. The applicant complained of the length of his detention between 10 October 2003 and 9 November 2005. He relied on Article 5 § 3 of the Convention, which, in so far as relevant, reads:

"Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial."

18. The Government contended that the length of the applicant's detention had not been excessive, because, as the domestic courts had found, he had been charged with serious offences and there existed a risk of him absconding or reoffending.

19. The applicant contested these arguments.

A. Admissibility

20. 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.

B. Merits

21. The Court notes that the applicant's complaint concerns the period from 10 October 2003 to 9 November 2005 (see paragraph 17 above), that is, a period of two years and one month.

22. The Court reiterates that the persistence of a reasonable suspicion is a condition *sine qua non* for the lawfulness of the continued deprivation of liberty, but after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the judicial authorities gave other relevant and sufficient grounds to justify the deprivation of liberty. It must also ascertain whether the competent national authorities displayed special diligence in the conduct of the criminal proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152-53, ECHR 2000-IV).

23. In the present case, it is not disputed between the parties that a reasonable suspicion that the applicant had committed an offence persisted throughout the period under consideration as, at the time, the charges against him were being examined by a court (see paragraphs 6-8 above). The Court must therefore establish whether the domestic courts gave other relevant and sufficient grounds to justify his continued deprivation of liberty.

24. The Court notes that during the period under consideration the domestic courts examined and dismissed six requests for release by the applicant. They relied on two grounds to justify his continued detention. Firstly, they pointed out that the applicant had been charged with serious offences. Secondly, they considered that there existed a risk of him absconding or reoffending as there were other criminal proceedings pending against him, he had earlier convictions, and had once failed to attend a hearing (see paragraph 13 above). At the same time, the courts dismissed the applicant's arguments concerning his state of health and family situation (see paragraph 14 above), giving reasons which the Court finds adequate.

25. The Court is ready to accept that the grounds referred to by the domestic courts were relevant. However, it does not find them sufficient to justify such a lengthy period of detention.

26. The Court observes also that prior to October 2003 the applicant had already spent in detention around two years, namely the periods from 25 July 2000 to 5 November 2001 and from 2 January to 6 October 2002 (see paragraph 9 above). However, the domestic courts did not refer to that circumstance and do not appear to have taken it into account. In replying to

the applicant's argument that his detention had already lasted too long, they merely pointed out that the case was already at the trial stage and that hearings were being scheduled at reasonable intervals (see paragraph 14 above).

27. Moreover, the Court finds that during the period under consideration the authorities failed to conduct the criminal proceedings with the special diligence required in view of the fact that the applicant was in detention (see paragraph 22 above). During that period the case was being examined solely by the Plovdiv Regional Court, which, as the Court will elaborate in more detail below (see paragraphs 36-38), failed to proceed speedily with examining the case.

28. In view of the considerations above and the overall context of the case, the Court finds that the applicant's detention from 10 October 2003 and 9 November 2005 lasted an unreasonably long period of time. There has accordingly been a violation of Article 5 § 3 of the Convention.

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

29. The applicant also complained that the length of the criminal proceedings against him was unreasonable. He relied on Article 6 § 1 of the Convention, which, in so far as relevant, reads:

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

30. The Government argued that the applicant had failed to exhaust the available domestic remedies, because he had not brought a claim for damages under the SMRDA (see paragraph 16 above). Moreover, they considered that the length of the proceedings had been reasonable.

31. The applicant contested these arguments.

A. Admissibility

32. The Court observes that objections identical to the one raised by the Government in the present case (see paragraph 30 above) have been rejected in earlier cases against Bulgaria (see *Nalbantova v. Bulgaria*, no. 38106/02, § 35, 27 September 2007, and *Balabanov v. Bulgaria*, no. 70843/01, § 31, 3 July 2008). It sees no reason to reach a different conclusion in the present case and accordingly rejects the objection.

33. The Court further considers that the 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.

B. Merits

34. The period to be taken into consideration began on 22 July 2000, when the applicant was charged (see paragraph 6 above) and ended with the Plovdiv Regional Court's judgment of 9 January 2006 (see paragraph 8 above). It thus lasted five years, five months and eighteen days for pre-trial proceedings and one level of court.

35. 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). Furthermore, the Court has held that where a person is detained pending the determination of a criminal charge against him, the fact of his detention is itself a factor to be considered in assessing whether the requirement of a decision on the merits within a reasonable time has been met (see *Abdoella v. the Netherlands*, 25 November 1992, § 24, Series A no. 248-A, and *Mõtsnik v. Estonia*, no. 50533/99, § 40, 29 April 2003).

36. The Court notes that although the investigation against the applicant was concluded rather speedily, within less than a year (see paragraph 6 above), the proceedings before the Plovdiv Regional Court lasted for more than four and a half years, from 7 June 2001 to 9 January 2006 (see paragraphs 6 and 8 above), during which time the court held seventeen hearings. Even if it appears that they were mostly scheduled at reasonable intervals, between one and five months, with only the two last hearings being scheduled within eight months (see paragraph 7 above), the Court does not consider that the overall protraction of the proceedings brought about by such a high number of hearings was justified (see, *mutatis mutandis*, *Merdzhanov v. Bulgaria*, no. 69316/01, §§ 40-41, 22 May 2008). Even if four of the hearings were adjourned because the applicant or his lawyer did not attend, and another three at the request of the applicant's co-accused or the victim (*ibid.*), in view of the overall length of the proceedings and the number of hearings, the delay thus caused does not appear to be significant.

37. The Court notes further that the present case was rather complex, as it concerned several offences, allegedly committed by two accused (see paragraph 6 above). However, this alone cannot account for the delay in the proceedings. It is noteworthy in this respect that in spite of the relative complexity of the case the preliminary investigation was completed rather quickly (*ibid.*).

38. Having regard to the considerations above and to the fact that throughout most of the trial the applicant was in detention (see paragraphs 9 and 11-12 above), which necessitated special diligence on the part of the

authorities (see paragraph 35 above), the Court considers that the length of the proceedings was excessive.

39. There has therefore been a breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

40. The applicant also complained that he did not have effective remedies in respect of the length of the criminal proceedings, in breach of Article 13 of the Convention, taken in conjunction with Article 6 § 1. Article 13 reads:

“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.”

41. The Government did not comment on this complaint.

A. Admissibility

42. The Court notes that this complaint is linked to the complaint under Article 6 § 1, examined above, and must therefore likewise be declared admissible.

B. Merits

43. 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. 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, § 156-7, ECHR 2000-XI).

44. The Court refers to its finding above (see paragraph 32) that a claim for damages under the SMRDA did not represent an effective remedy. The Court is not aware of the existence of any other relevant remedy under Bulgarian law capable of preventing the alleged violation or its continuation, or of providing adequate redress (see *Sidjimov v. Bulgaria*, no. 55057/00, §§ 41-42, 27 January 2005, and *Balabanov*, cited above, §§ 32-33).

45. Accordingly, the Court concludes that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies under domestic law in respect of the length of the criminal proceedings against the applicant.

IV. 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 14,000 euros (EUR) in respect of non-pecuniary damage.

48. The Government urged the Court to dismiss that claim.

49. The Court considers that the applicant must have suffered anguish and distress as a result of the violations of his rights found in the case. Ruling on an equitable basis, it awards him EUR 2,300 under this head, plus any tax that may be chargeable.

B. Costs and expenses

50. The applicant also claimed EUR 2,592 for the costs and expenses incurred before the Court. In support of this claim he submitted a time-sheet for the work performed by his lawyers. He requested that out of any amount awarded under this head, EUR 300 be paid to him and the remainder directly to his lawyers, Mr M. Ekimdzhev and Ms K. Boncheva.

51. The Government considered the claim to be excessive.

52. According to the Court's case-law, an applicant is 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 circumstances of the case and the above criteria, the Court considers it reasonable to award the sum of EUR 700, plus any tax that may be chargeable to the applicant. EUR 300 of that sum is to be paid to the applicant and the remaining EUR 400 are to be transferred directly into his lawyers' bank account.

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 5 § 3 of the Convention on account of the excessive length of the applicant's detention;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant;
4. *Holds* that there has been a violation of Article 13 of the Convention, on account of the lack of effective remedies in respect of the length of the proceedings;
5. *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, to be converted into Bulgarian leva at the rate applicable at the date of settlement:
 - (i) EUR 2,300 (two thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 700 (seven hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, EUR 400 (four hundred euros) of which is to be paid directly into the bank account of the applicant's legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva;
 - (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;
6. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President