



## Ban on all gainful employment for a civil servant during six-year-long criminal proceedings against him was excessive

In today's Chamber judgment in the case of **[D.M.T. and D.K.I. v. Bulgaria](#)** (application no. 29476/06), which is not final<sup>1</sup>, the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 6 § 1 in conjunction with Article 6 § 3 (a) and (b) (right to a fair trial – right to be informed promptly of the accusation; right to adequate time and facilities for preparation of defence) of the European Convention on Human Rights;**

**a violation of Article 6 § 1 (right to a fair trial within a reasonable time);**

**a violation of Article 8 (right to respect for private and family life); and**

**a violation of Article 13 (right to an effective remedy) in conjunction with Article 6 § 1 and Article 8.**

The case concerned the suspension of a civil servant for more than six years while criminal proceedings against him were ongoing, and the ban on his engaging in any other gainful employment in the public and private sectors, except in teaching and research.

The Court found, in particular, that the ban had not been necessary or proportionate to the legitimate aim pursued by the opening of criminal proceedings, and could not be regarded as the normal and inevitable consequence of such proceedings.

### Principal facts

The applicants, Mr D.M.T. and his wife, Ms D.K.I., are Bulgarian nationals who were born in 1951 and 1952 respectively and live in Sofia. D.M.T. was head of the Interior Ministry's Economic Crime Department. On 28 July 1999 a businessman contacted the national Organised Crime Squad to report that D.M.T. had approached him demanding a large sum of money. An investigation was carried out and D.M.T. was arrested on suspicion of soliciting bribes. In a judgment of 30 October 2002 he was sentenced to 20 years' imprisonment. That judgment was quashed on 14 July 2004 by the Supreme Court of Cassation, which referred the case to the Military Court of Appeal for a fresh examination, finding that the alleged acts might instead have constituted the criminal offence of fraud. On 31 January 2005 the Military Court of Appeal upheld the conviction for soliciting bribes; however, on 21 October 2005 the Supreme Court of Cassation held that the acts in question amounted to fraud, since D.M.T. had attempted to steal a large sum of money from the victim, saying that it would go to senior government officials

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<sup>1</sup> Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution)

who would shield the victim from prosecution in connection with his company's activities. D.M.T. was sentenced to seven years' imprisonment and forfeited half of his share in the family home. He was temporarily barred from occupying a post in the Interior Ministry.

In addition, during the course of the proceedings D.M.T. made several applications for the annulment of the decision taken in August 1999 to suspend him from his duties on account of the ongoing criminal proceedings against him. In accordance with Bulgarian law and D.M.T.'s status as a civil servant, his suspension prevented him from seeking other employment, except in the fields of teaching or research. D.M.T. asked to be dismissed in order to be able to seek employment. However, he was not dismissed until 9 December 2005, after his trial had ended.

D.M.T. submitted that, since he had not been paid while he was suspended, his family had had to live off his wife's income alone, which according to him was insufficient to meet their daily needs. He stated that he had been compelled to borrow money from their close relatives.

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 and 6 § 3 (a), (b) and (d) (right to a fair hearing within a reasonable time), D.M.T. complained that the length of the criminal proceedings against him had been excessive, that the charges had been reclassified only at the stage of the Supreme Court of Cassation's judgment, and that he had been unable to have certain defence witnesses examined and additional evidence gathered. Under Article 8 (right to respect for private and family life), he complained that as a result of his suspension, it had been impossible for him to receive his salary and to seek other employment. Relying on Article 13 (right to an effective remedy), he complained that he had not had any effective domestic remedies in respect of his complaints under Article 6 § 1 and Article 8. Lastly, under Article 1 of Protocol No. 1 (protection of property), he complained that he had been required to forfeit half of his share of the family home.

The application was lodged with the European Court of Human Rights on 23 March 2006.

Judgment was given by a Chamber of seven judges, composed as follows:

Lech **Garlicki** (Poland), *President*,  
David Thór **Björgvinsson** (Iceland),  
Päivi **Hirvelä** (Finland),  
George **Nicolaou** (Cyprus),  
Ledi **Bianku** (Albania),  
Zdravka **Kalaydjieva** (Bulgaria),  
Nebojša **Vučinić** (Montenegro),

and also Fatoş **Aracı**, *Deputy Section Registrar*.

## Decision of the Court

### Reclassification of the charges (Article 6 § 3 (a) and (b))

In its judgment of 14 July 2004 the Supreme Court of Cassation had found that the acts of which D.M.T. was accused could be regarded as constituting a different criminal offence from that of soliciting bribes, namely fraud, and had referred the case to the Military Court of Appeal for a fresh examination. However, the charges had not subsequently been reclassified either by the public prosecutor or by the Court of Appeal. At no time during the proceedings before it had the Supreme Court notified the parties of the precise legal classification it intended to adopt. The Court reiterated that it was

equally important to inform applicants of the factual basis on which they were being accused and of the legal classification of their alleged acts. It considered that if D.M.T had been properly informed, his choice of defence strategy would have been different, especially as the constituent elements of the offences of soliciting bribes and fraud were very different under the Bulgarian Criminal Code. Accordingly, the Court considered that the Supreme Court of Cassation should have afforded D.M.T. the opportunity to submit argument on the new charges of fraud. It found a violation of Article 6 § 1 in conjunction with Article 6 § 3 (a) and (b).

Having regard to its finding of a violation, the Court considered that there was no need for a separate examination of D.M.T.'s allegations about the courts' refusal to examine witnesses and gather additional evidence.

### Length of the criminal proceedings (Article 6 § 1)

The Court observed that the proceedings, which had lasted a total of six years and two months at three levels of jurisdiction, had been delayed by two and a half years through shortcomings on the part of the authorities. This delay was especially regrettable as D.M.T. had been suspended from his civil-service post throughout the proceedings and Bulgarian legislation did not allow him to pursue any other gainful employment during that period, except in the fields of teaching and research. The length of the proceedings had therefore gone beyond the limits of what was reasonable, in breach of Article 6 § 1.

### Suspension from the civil service (Article 8)

D.M.T.'s suspension from his post had been in accordance with the law, and the relevant provisions of the law had been sufficiently accessible, clear and foreseeable to him. The measure in question had pursued the aim of preventing disorder and crime. Since D.M.T. had been suspended because of the criminal proceedings against him, any unwarranted delay in the proceedings had had the effect of prolonging the application of this coercive measure. Although D.M.T. had been suspended for an excessively lengthy period, the suspension in itself had been a normal and inevitable consequence of the criminal proceedings. Nevertheless, in contrast to the case of *Karov v. Bulgaria*<sup>2</sup>, D.M.T.'s case raised the issue of the necessity and proportionality of the effects of the suspension, in particular the restriction on his seeking other employment.

While in normal circumstances such a restriction could be justified by the concern to prevent conflicts of interests in the civil service, the application of this blanket ban for more than six years in respect of a civil servant who had been suspended had caused him to bear an excessive burden. Seeing that the authorities had not provided any satisfactory explanations for their refusal to dismiss him, an outcome which would have allowed him to seek other employment, and that the Court was not persuaded that this would have obstructed the criminal proceedings, the restriction in question could not be regarded as necessary and proportionate to the legitimate aim pursued, or as the normal and inevitable consequence of the proceedings. Accordingly, the authorities had not struck a fair balance between respect for D.M.T.'s private life and the interests of society, thus breaching Article 8.

### Effective remedy (Article 13)

The Court could see no reason to depart from the conclusions it had reached in several similar cases against Bulgaria, in which it had found that there was no effective remedy by which to expedite criminal proceedings or to obtain compensation for their excessive length. It therefore found a violation of Article 13 in conjunction with Article 6 § 1.

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<sup>2</sup> *Karov v. Bulgaria* (no. 45964/99, 16 November 2006).

Furthermore, the Bulgarian Government had not referred to any compensatory remedies that could have redressed the situation complained of by D.M.T. under Article 8, and neither an action to establish State liability nor a claim for damages could be regarded as effective remedies. The Court concluded that there had been a violation of Article 13 in conjunction with Article 8.

### Confiscation of part of D.M.T.'s share of the family home (Article 1 of Protocol No. 1)

D.M.T.'s wife could not be said to be a victim in this respect, given that her share of the property had increased after she had purchased the 25% share forfeited by her husband. Moreover, the complaints by D.M.T. under this Article were closely linked to his conviction in the criminal proceedings. Having regard to its finding of a violation of Article 6 § 1 in conjunction with Article 6 § 3 (a) and (b), the Court considered that no separate issue arose under Article 1 of Protocol No. 1 and Article 13.

### Just satisfaction (Article 41)

The Court held that Bulgaria was to pay D.M.T. 5,800 euros (EUR) in respect of non-pecuniary damage.

*The judgment is available only in French.*

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