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

FOURTH SECTION

DECISION

Application no. 16694/06
Marek BIVOLAROV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 19 November 2013 as a Committee composed of:

Ledi Bianku, *President,*
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 April 2006,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Marek Bivolarov, is a Bulgarian national, who was born in 1972 and lives in Pazardzhik. He was represented before the Court by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv.

The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

On 17 August 1998 criminal proceeding were opened against the applicant and another person for kidnapping and for rape. On an unspecified date in 1999 the applicant was indicted and the proceedings began before the Pazardzhik District Court.

In the course of the proceedings before the first-instance court five hearings were adjourned because the applicant was absent, two hearings were adjourned because of the absence of an expert and further three hearings were adjourned because the applicant's lawyer was absent. The court heard a large number of witnesses and admitted several expert reports.

In a judgment of 19 April 2004 the District Court found the applicant guilty of kidnapping and rape and sentenced him to six years' imprisonment. On appeal, in a judgment of 28 October 2004 the Pazardzhik Regional Court upheld the lower court's judgment.

In a final judgment of 28 October 2005 the Supreme Court of Cassation reduced the applicant's sentence to four years' imprisonment. In determining the sentence, the Supreme Court of Cassation specifically stated that while it agreed with the lower courts about the factors to be taken into consideration when establishing the sentence, it also found that the length of the proceedings ran counter to the requirement of a reasonable length of proceedings under Article 6 § 1 of the Convention and because the applicant was not responsible for this delay, it had to reflect on the sentence.

COMPLAINTS

The applicant complained under Articles 6 § 1 and 13 of the Convention about the length of the criminal proceedings against him.

The applicant further complained under Article 6 of the Convention about the outcome and alleged unfairness of the criminal proceedings.

THE LAW

A. Alleged violations related to the length of the criminal proceedings and the lack of effective domestic remedies

The applicant complains about the excessive length of the criminal proceedings against him. He relies on Articles 6 and 13 of the Convention, which provide in so far as relevant:

Article 6

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

Article 13

"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."

The Court notes that the criminal proceedings against the applicant began on 17 August 1998 and ended on 28 October 2005. The proceedings thus lasted 7 years and 2 months for a pre-trial stage and three levels of jurisdiction.

The Court observes that in its judgment of 28 October 2005 the Supreme Court of Cassation reduced the applicant's sentence from six to four years' imprisonment and made a reference to Article 6 § 1, stating that the length of the proceedings against the applicant ran counter to the requirement of reasonableness and that because the applicant was not responsible for this delay, it had to reflect on the sentence. The question then arises whether the applicant may still claim to be a victim of a violation of his right to a trial within a reasonable time.

According to the Court's case-law, mitigation of sentence granted on account of the excessive length of proceedings may deprive the individual concerned of his or her status as a victim when the national authorities acknowledge in a sufficiently clear way the failure to observe the reasonable-time requirement of Article 6 § 1 and afford redress by reducing the sentence in an express and measurable manner (see *Dimitrov and Hamanov v. Bulgaria*, no. 48059/06 and 2708/09, § 64, 10 May 2010, with further references).

In the instant case, the Court is satisfied that the ruling of the Supreme Court of Cassation making reference to Article 6 § 1 of the Convention and explicitly finding that the length of the proceedings ran counter to the requirements of reasonableness, amount to such an acknowledgment. As to the mitigation of the sentence, the Court observes that the Supreme Court of Cassation agreed with the lower courts about the factors to be taken into consideration when establishing the sentence, but it also went on to add to those factors the unreasonable length of the proceedings, and to specifically state that this circumstance should reflect on the sentence, which it lowered by two years.

In these circumstances, the Court is satisfied that the Supreme Court of Cassation's finding concerning the effect of the excessive length of the proceedings amounted to a primary ground to mitigate the sentence and had a decisive and measurable impact on it. The reduction therefore amounted to sufficient redress for the excessive length of the criminal proceedings against the applicant.

In view of the foregoing, the Court considers that the applicant can no longer claim to be a victim of a violation of Article 6 § 1 within the meaning of Article 34 of the Convention. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

As regards the applicant's complaint under Article 13 of the Convention, the Court recalls that this provision guarantees the availability at national level of a remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). In view of the Court's conclusion above regarding the applicant's complaint under Article 6 of the Convention, no arguable claim

arises under that Article. Accordingly, the complaint under Article 13 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

B. The other complaint raised by the applicant

Having carefully examined the applicant's remaining complaint, having regard to all the evidence in its possession, and in so far as it has jurisdiction to examine the allegation, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı Deputy Registrar	Ledi Bianku President