

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

FIFTH SECTION

CASE OF DELOV v. BULGARIA

(Application no. 30949/04)

JUDGMENT

STRASBOURG

24 February 2011

This judgment is final but it may be subject to editorial revision.



In the case of Delov v. Bulgaria,

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

Mirjana Lazarova Trajkovska, *President,*
Zdravka Kalaydjieva,
Julia Laffranque, *judges,*

and Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 31 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 30949/04) 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 Georgi Kostadinov Delov ("the applicant"), on 3 August 2004.

2. The Bulgarian Government ("the Government") were represented by their Agent, Mrs R. Nikolova of the Ministry of Justice.

3. On 31 March 2009 the President of the Fifth Section decided to give notice of the application to the Government. In accordance with Protocol no. 14 the application was allocated to a Committee of three Judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1965 and resides in Bulgaria.

5. The applicant was a defendant in several criminal proceedings for different offences and was convicted a number of times.

A. The proceedings for murder and the applicant's extradition

6. On an unspecified date in 1992 criminal proceedings for murder committed in Bulgaria were opened against the applicant and another person.

7. On an unspecified date the applicant moved to the Czech Republic. In September 1993 he was charged with, *inter alia*, robbery and unlawful

possession of firearms committed in the Czech Republic and was detained in a prison in Prague. On 7 April 1995 he was released and on 31 May 1995 the criminal proceedings against him for robbery and unlawful possession of firearms in the Czech Republic were discontinued as the Bulgarian authorities undertook to prosecute him for these offences in Bulgaria instead.

8. In a decision of 7 March 1996, taken in camera, the Prague City Court allowed the applicant's extradition to Bulgaria, noting that there he would also be prosecuted for the robbery and the unlawful possession of firearms committed in the Czech Republic.

9. On 8 July 1996 the applicant was extradited from the Czech Republic on account of criminal proceedings opened against him in Bulgaria for a number of offences, including murder.

10. The Court has not been provided with information about the course of the proceedings for murder between 1992 and 2005.

11. On an unspecified date in 2005 the applicant's case was brought to the Plovdiv Regional Court.

12. By a judgment of 26 May 2006 the Plovdiv Regional Court acquitted the applicant.

13. The judgment was upheld on 27 June 2007 by the Sofia Court of Appeal. From the materials at the Court's possession it appears that in so far as the judgment concerned the applicant's acquittal, it was not appealed against and entered into force.

B. The criminal proceedings for robbery and unlawful possession of firearms

14. In March 1999, pursuant to a commitment undertaken before the Czech authorities in 1995 (see paragraph 7 above), the Bulgarian authorities opened criminal proceedings against the applicant for the robbery and unlawful possession of a gun, offences committed in the Czech Republic.

15. On 25 October 2001 the applicant was charged with the above offences.

16. On 12 July 2002 the proceedings were stayed as the victims of the robbery could not be found for questioning. On 22 July 2003 they were resumed upon the applicant's request.

17. In August 2003 the Bulgarian authorities requested form the Czech and the Spanish authorities to carry out certain investigative actions and to provide information and documents in connection to the above offences.

18. On 11 September 2003 the proceedings were divided into two separate cases.

19. The case for unlawful possession of firearms ended on 1 April 2004 by a judgment of the Plovdiv District Court that became final on 19 April 2004. The court found the applicant guilty and sentenced him to one year

imprisonment, which was close to the minimum sentence for this offence. In determining the sentence it took into account, among other mitigating circumstances, the fact that the offence had been committed more than ten years ago.

20. Meanwhile, on 2 October 2003 the charges for robbery against the applicant were dropped. On 18 July 2005 the applicant was informed that he was not subject to charges under these proceedings. However the proceedings continued.

21. On 7 July 2006 the prosecution authorities discontinued the proceedings against the applicant for lack of sufficient evidence that he had committed the robbery. The proceedings continued against an unknown perpetrator.

THE LAW

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

22. The applicant complained that the length of the two sets of criminal proceedings against him 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 ..."

A. The criminal proceedings for murder

1. The parties' submissions

23. The Government argued that the case was complicated as it concerned murder, involved two defendants both of which had to be extradited from different European countries, and the questioning of numerous witnesses. They contended that under the circumstances of the case, the authorities had acted with sufficient speediness and diligence. The proceedings were handled speedily at the court phase. They argued that the applicant should be held responsible for the delay until 1996, caused by his absconding and his extradition from the Czech Republic.

2. The Court's assessment

(a) Admissibility

24. The Court notes that the complaint about the length of the proceedings for murder is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

(b) Period to be taken into consideration

25. The Court observes that the proceedings for murder against the applicant were opened in 1992 (see paragraph 6 above). It appears, however, that at that time no investigative actions with the participation of the applicant took place. It is not clear whether he was at all aware of the existence of these proceedings. It was only in July 1996 when he was extradited from the Czech Republic in connection to, *inter alia*, these proceedings (see paragraph 9 above) that the applicant's situation was substantially affected. Accordingly, the beginning of the period is 8 July 1996.

26. In respect of the applicant the proceedings ended on 27 June 2007 (see paragraph 13 above). They thus lasted ten years, eleven months and twenty one days for a preliminary investigation and two levels of jurisdiction.

C. Merits

27. 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).

28. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see, among many others, *Sidjimov v. Bulgaria*, no. 55057/00, § 36, 27 January 2005 and *Stefanov and Yurukov v. Bulgaria*, no. 25382/04, § 17, 1 April 2010).

29. The Court further notes that the Government have not put forward any information or arguments demonstrating that the examination of the case at the preliminary investigation stage for a period of more than ten years (see paragraphs 9-11 above) was justified. They have not argued that the applicant was responsible for any significant delays within the period into consideration.

30. In view of the above and having regard to its case-law on the subject and the global length of the proceedings, 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.

B. The criminal proceedings for robbery and unlawful possession of firearms

1. The parties' submissions

31. The Government contended that the proceedings began on 25 October 2001 when the applicant was indicted. They argued, *inter alia*, that the cases were complicated as it was necessary to receive the assistance of the Czech and the Spanish authorities. They also argued that as the charges for robbery were dropped on 2 October 2003, thereafter the applicant did not suffer any anguish or distress as a result of these proceedings.

32. The applicant disagreed.

2. The Court's assessment

(a) Admissibility

33. The Court observes that in its judgment of 1 April 2004 the Plovdiv District Court, when determining the applicant's sentence, referred, *inter alia,* to the long period of time that had elapsed since the offence was committed and therefore sentenced the applicant to one year imprisonment, which was close to the minimum sentence for this offence (see paragraph 19 above). However, as in the cases of *Mladenov v. Bulgaria*, (no. 58775/00, §§ 31 and 32, 12 October 2006) and *Sheremetov v. Bulgaria*, (no. 16880/02, §§ 33-34, 22 May 2008), in the present case the domestic courts did not acknowledge in a sufficiently clear manner a breach of Article 6 § 1 on account of the length of the proceedings and did not afford adequate redress as it is unclear what part of the reduction of the applicant's sentence was due to the belated determination of the charges against him and what part to other mitigating factors.

34. In these circumstances, as in the cases of *Mladenov* and *Sheremetov*, both cited above, the applicant cannot be considered as having lost his victim status under Article 34 of the Convention.

35. The Court further considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

(b) Period to be taken into consideration

36. The Court notes that the official charges against the applicant were brought on 25 October 2001. However, as early as 1995–1996 the Bulgarian authorities had undertaken, in official assurances given to the Czech authorities, a legal obligation to bring such charges and in its decision of 7 March 1996 the Prague City Court referred specifically to the future prosecution of the robbery and possession of firearms offences (see paragraphs 7 and 8 above). Thus the Court considers that at the time of his extradition in 1996 the applicant must have been aware of this fact. Therefore, it finds that the applicant's situation was "substantially affected" and he could be considered as subject to a "charge" from the moment he was extradited to Bulgaria (for the relevant principles in respect of the autonomous meaning of the word "charge" under the Convention see, among many others, *Deweer v. Belgium*, 27 February 1980, § 46, Series A no. 35, *Eckle v. Germany*, 15 July 1982, § 73, Series A no. 51 and *Corigliano v. Italy*, 10 December 1982, § 34, Series A no. 57). Accordingly, the beginning of the period to be taken into consideration is 8 July 1996.

37. In respect of the end of the period the Court observes that the formal charges against the applicant were dropped on 2 October 2003 (see paragraph 20 above). However, the proceedings against him continued until 7 July 2006 (see paragraph 21 above). The Court, therefore, considers that the applicant did not cease to be affected by the pendency of the proceedings until they were discontinued. Accordingly, the end of the period is 7 July 2006.

38. The proceedings thus lasted ten years and one day for a preliminary investigation and one level of court.

C. Merits

39. The Court accepts the Government's argument that the proceedings were slowed down by the fact that the assistance of foreign authorities had been needed. It also considers that the proceedings were relatively complex because the offences were committed abroad and therefore important information and evidence were in the possession of foreign authorities. On the other hand, however, the Court observes a number of delays that could be attributed to the Bulgarian authorities. Thus, for example, the proceedings remained at the preliminary investigation stage for a period of more than seven years from their official opening in 1999 and more than ten years since the applicant's extradition in 1996 (see paragraphs 9 and 14-20 above). The request for assistance was sent to the Czech authorities only in 2003, about four years after the beginning of the proceedings (see paragraph 17 above). It is unclear what, if any, investigative actions were carried out during the preliminary investigation stage. The Court finds that the Government have not put forward any arguments and evidence capable

of persuading it that the delay at this stage of the proceedings was justified. Furthermore, the global length of the proceedings is excessive in itself. The applicant does not appear to have been responsible for any significant delays.

40. Having regard to its case-law on the subject and the overall duration of the proceedings 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.

II. THE REMAINDER OF THE APPLICANT'S COMPLAINTS

41. Relying on almost all provisions of the Convention and the Protocols to it, the applicant also complained that the criminal proceedings were unfair, that the periods of his pre-trial detention and his working days in prison were not properly deducted from his sentences, that he was tried twice for the offences committed in the Czech Republic, that the conditions of his detention were inhuman and that he was ill-treated by the prison administration and by another prisoner in 1996 and 1997, that he was not allowed to attend his father's funeral in 2001, that his right to correspondence was violated and that he was discriminated against.

42. The Court has examined these complaints as submitted by the applicant. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

43. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 1,000,000 euros (EUR) in damage.

46. The Government contested the claim as excessive.

47. The Court observes that in the present case, an award of just satisfaction can be based only on the violation of Article 6 § 1 of the Convention concerning the length of the two sets of proceedings. It accepts that the applicant must have sustained non-pecuniary damage as a result of this violation. Ruling on an equitable basis and taking into account all the circumstances of the case, it awards him EUR 6,500 under this head.

B. Costs and expenses

48. The applicant did not claim costs and expenses for the proceedings before the Court. He mentioned costs for his legal representation in the domestic proceedings, without giving any further details in that respect.

49. In these circumstances, the Court makes no award under this head.

C. Default interest

50. 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 complaints concerning the length of the criminal proceedings for robbery and unlawful possession of firearms and of those for murder admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the two sets of criminal proceedings against the applicant;

3. *Holds*
   (a) that the respondent State is to pay to the applicant, within three months EUR 6,500 (six thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 24 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Mirjana Lazarova Trajkovska President