

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

FIFTH SECTION

CASE OF DINUCCI v. BULGARIA

(Application no. 11486/04)

JUDGMENT

STRASBOURG

24 February 2011

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



In the case of Dinucci v. Bulgaria,

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

Mirjana Lazarova Trajkovska, *President,*
Mark Villiger,
Zdravka Kalaydjieva, *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. 11486/04) 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 an Italian national, Mr Paolo Dinucci ("the applicant"), on 22 March 2004.

2. The applicant was represented by Mr C. Defilippi, a lawyer practising in Milan. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Dimova, of the Ministry of Justice.

3. On 12 February 2008 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the proceedings. In accordance with Protocol no. 14 to the Convention, the application was allocated to a Committee of three Judges.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in Sofia.

5. In 1992 the applicant and three other individuals entered into a contract with a company engaged in cigarette production.

6. On 6 July 1993 the applicant was remanded in custody. Shortly after that charges were raised against him and the other three individuals for documentary fraud and aggravated fraud committed in respect of the cigarette company as well as for making false declarations. They were accused, in particular, of organising a fictitious export of cigarettes in order to avoid paying excise tax.

7. On 26 July 1993 the applicant was released on bail.

8. On 5 December 1994 the prosecutor discontinued the proceedings in respect of some of the charges. On 4 April 1995 the prosecutor filed an indictment against the applicant with the Plovdiv Regional Court for aggravated documentary fraud.

9. In a judgment of 16 November 1998 the Plovdiv Regional Court convicted the applicant and sentenced him to seven years of imprisonment.

10. On an unspecified date, apparently following the applicant's appeal, the Plovdiv Appellate Court quashed the judgment of the Regional Court and remitted the case to the prosecutor for further investigation.

11. On 27 October 1999 the prosecutor filed a fresh indictment with the Plovdiv District Court for aggravated fraud. The applicant and his alleged accomplices were accused, in particular, of causing significant material damage to the company as the stipulated export of cigarettes never took place and the company had to pay the excise tax.

12. On an unspecified date the company brought a civil claim against the applicant which was accepted by the court for examination. On 16 December 1999 and 26 January 2000 the District Court held hearings which were adjourned as the applicant failed to appear.

13. On 3 March 2000 the applicant was remanded in custody.

14. On 30 June 2000 the District Court acquitted the applicant and his alleged accomplices and dismissed the civil claim against them. The court found that there had been no casual link between the behaviour of the accused and the damage sustained by the company as in any event the latter had been bound by law to pay the excise tax.

15. Upon the prosecutor's appeal, on 20 February 2001 the Plovdiv Regional Court upheld the judgment.

16. Upon the prosecutor's appeal, on 12 February 2002 the Supreme Court of Cassation quashed the acquittal and remitted the case to the Regional Court for new examination.

17. In a judgment of 20 May 2004 the Plovdiv Regional Court convicted the applicant and sentenced him to three years of imprisonment.

18. Upon the applicant's appeal, in a judgment of 4 April 2005 the Supreme Court of Cassation quashed the judgment for procedural breaches and remitted the case to the Regional Court for new examination.

19. In a judgment of 1 March 2006 the Plovdiv Regional Court upheld the judgment of 30 June 2000 (see paragraph 14 above).

20. Upon the prosecutor's appeal, on 17 April 2007 the Supreme Court of Cassation quashed the judgment of the Plovdiv Regional Court, stating, *inter alia*, that the lower court had failed to examine the case thoroughly, and remitted the case to the Regional Court for new examination.

21. In a decision of 12 February 2008 the court discontinued the proceedings in its criminal part as time barred. The decision became final on an unspecified date, not later than May 2008.

22. Following the decision of 12 February 2008, the proceedings on the merits continued only in respect of the civil claim against the applicant and his alleged accomplices.

23. In a judgment of 17 March 2008 the Plovdiv Regional Court upheld the judgment of 30 June 2000 in its civil part.

24. In a decision of 5 June 2008 the Supreme Court of Cassation discontinued the examination of an appeal by the plaintiff stating that the judgment of 17 March 2008 was not subject to judicial review.

THE LAW

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

25. The applicant complained that the length of the 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 ..."

26. The Government did not comment.

27. The period to be taken into consideration began on 6 July 1993 when the applicant was remanded in custody and ended on an unspecified date between February 2008 and May 2008 when the domestic court's decision to discontinue the criminal proceedings against the applicant and thus to finally determine the charges against him became final. It thus lasted more than fourteen years and seven months for preliminary investigation and three levels of jurisdiction.

A. Admissibility

28. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

29. 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)

30. 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, *Yankov and Manchev v. Bulgaria*, nos. 27207/04 and 15614/05, §§ 17-26, 22 October 2009; *Stefanov and Yurukov v. Bulgaria*, no. 25382/04, § 17, 1 April 2010). The instant case was relatively complex as it involved charges against several persons and examination of voluminous material. With the exception of several months at the end of 1999 and the beginning of 2000 (see paragraph 12) there appear to be no significant delays attributable to the applicant. The main reason why the charges against him were not determined for such a long time was the fact that the case was remitted three times by the Supreme Court of Cassation to the lower court for new examination (see paragraphs 16, 18 and 20).

31. Having regard to its case-law on the subject, 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed pecuniary and non-pecuniary damage, submitting that the unreasonable length of the criminal proceedings against him had unfavourable repercussions on his professional career, his private and family life. He did not specify the exact amount of his claim.

34. The Government left the matter to the Court's discretion.

35. The Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards him EUR 6,800 under that head.

B. Costs and expenses

36. The applicant claimed reimbursement of costs and expenses incurred before the domestic courts and before the Court to be determined in

accordance with the Court's case-law in this respect. No supporting documents were presented.

37. The Government contended these claims to be unsubstantiated.

38. 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 were actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant's claim is not supported by any evidence, such as a legal fee agreement, timesheet or receipts. It must therefore be rejected as unsubstantiated.

C. Default interest

39. 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 remainder of the application admissible;

2. *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;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 6,800 (six thousand and eight 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 amount 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