

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

FIFTH SECTION

CASE OF KANCHEV v. BULGARIA

(Application no. 16850/04)

JUDGMENT

STRASBOURG

24 February 2011

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



In the case of Kanchev 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. 16850/04) 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 Ivan Iliev Kanchev ("the applicant"), on 28 April 2004.

2. The applicant was represented by Mrs S. Stefanova and Mr K. Bakov, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Kotzeva, of the Ministry of Justice.

3. On 8 October 2008 the President of the Fifth Section decided to give notice of the application to the Government. 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 1968 and lives in Plovdiv.

A. The first set of criminal proceedings against the applicant

5. On 4 October 1990 the applicant and his alleged accomplice D.E. were charged with attempt to theft of two boxes of ham. On the same day the investigator questioned them and interviewed one witness. Two more witnesses were interviewed on 22 May 1992.

6. On 6 July 1992 the preliminary investigation was concluded and the file was sent to the prosecutor. On 14 August 1992 the proceedings were stayed because the investigating authorities could not find and question D.E.

7. From 14 August 1992 until December 1999 the case remained dormant.

8. In December 1999 the investigation authorities started working on the case. On 7 November 2001 the investigator ordered a fresh expert report to assess the value of the stolen goods. On 6 February and 4 June 2002 the applicant was charged again with the same offence. In the meantime the investigator questioned the applicant and interviewed witnesses.

9. On 23 August 2002 the investigation was concluded. On 22 November 2002 an indictment was filed with the Plovdiv District Court. Between November 2002 and February 2006 the court held six hearings. One of them was adjourned on the ground of the absence of a member of the panel and three of them on the ground of the absence of witnesses. Two hearings were adjourned because either the applicant or his lawyer did not appear.

10. Upon the prosecutor's request, on 21 December 2005 the court discontinued the criminal proceedings against the applicant on the ground that the statute of limitations had expired.

B. The second set of criminal proceedings against the applicant

11. On 8 June 1992 the applicant was questioned by the police in relation to an attempted aggravated theft of various domestic equipment items perpetrated the previous day. He confessed to the offence. The investigating authorities heard witnesses and seized some of the stolen items.

12. On 17 July 1992 criminal proceedings were opened against the applicant and his alleged accomplice A.M.

13. From 17 July 1992 until 7 February 2002 the case remained dormant.

14. On 7 February 2002 the investigation authorities questioned a witness. Between February and April 2002 the investigating authorities questioned several witnesses and ordered an expert report to assess the value of the stolen domestic equipment. On 2 April 2002 the applicant was charged and questioned. The investigation was concluded on 28 May 2003.

15. On 8 July 2003 an indictment was filed with the Plovdiv District Court. The first hearing, listed for 2 March 2004, was adjourned because of the applicant's absence. Following a court's decision ordering the applicant's detention, on 17 March 2004 the applicant was remanded in custody.

16. The court held another hearing on 13 October 2004. On 11 January 2005 the court approved a plea bargain agreement between the applicant

and the prosecuting authorities where the applicant confessed to the offence and was sentenced to three months of imprisonment.

THE LAW

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

17. 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 ..."

18. The Government did not comment.

A. Admissibility

19. 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

20. The period to be taken into consideration did not begin to run in October 1990 with regard to the first set and in June 1992 with regard to the second set of proceedings but only on 7 September 1992, when the Convention entered into force in respect of Bulgaria. However, to determine whether the time which has elapsed following this date is reasonable, it is necessary to take account of the stage which the proceedings had reached at that point. On this date both sets of criminal proceedings were pending at the preliminary investigation.

21. The period ended on 21 December 2005 in respect of the first set and on 11 January 2005 in respect of the second set of proceedings. It thus lasted approximately thirteen years and three months for the first set and approximately twelve years and four months for the second set of proceedings, for preliminary investigation and one level of court.

22. 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)

23. 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 cases were not complex and, with the exception of several months in the second set of proceedings (see paragraphs 15 and 16 above), 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 between September 1992 and December 1999 and between September 1992 and February 2002 the proceedings remained dormant (see paragraphs 7 and 13 above). The Government have not provided any explanation for these gaps.

24. Having regard to the above considerations and its case-law on the subject, the Court considers that in the instant case the length of each of the two sets of proceedings was excessive and failed to meet the "reasonable time" requirement.

25. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

26. The applicant further complained of the lack of an effective remedy in respect of the excessive length of the two sets of criminal proceedings against him. He relied on Article 13 of the Convention.

27. The Government did not comment.

28. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

29. The Court reiterates that 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 (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). Referring to its reasoning in other cases against Bulgaria where it found that at the material time and in similar circumstances Bulgarian law did not provide for an effective remedy (see, for example, *Myashev v. Bulgaria*, no. 43428/02, § 22, 8 January 2009), the Court sees no reason to reach a different conclusion in the present case.

30. Accordingly, the Court considers that there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage sustained as a result of the unreasonable length of the two sets of proceedings against him and the lack of effective domestic remedies in that respect.

33. The Government contested this claim.

34. The Court considers that the applicant must have sustained certain non-pecuniary damage as a result of the excessive length of the two sets of proceedings against him and the lack of effective remedies in this respect. Taking into account the particular circumstances and the awards made in similar cases, and ruling on an equitable basis, as required under Article 41, the Court awards the applicant EUR 4,000, plus any tax that may be chargeable.

B. Costs and expenses

35. The applicant also claimed EUR 4,130 for legal fees for the proceedings before the Court and EUR 190 for other costs, including translation of the observations, postage and office materials. In support of this claim the applicant presented an agreement with his lawyers and a time-sheet for fifty-nine hours at a rate of EUR 70 per hour. The applicant requested that the amount awarded for costs and expenses under this head be paid directly to their lawyers, Mrs S. Stefanova and Mr K. Bakov.

36. The Government contested these claims as excessive.

37. According to the Court's case-law, applicants are 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 information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600, covering costs and expenses under all heads. This sum is to be paid into the bank account of the applicant's legal representatives, Mrs S. Stefanova and Mr K. Bakov.

C. Default interest

38. 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 6 § 1 of the Convention on account of the two sets of criminal proceedings against the applicant;

3. *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 both sets of proceedings;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, payable directly into the bank account of the applicant's legal representatives;
   (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;

5. *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	Mirjana Lazarova Trajkovska
Deputy Registrar	President