CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37355/97
by S.H.K.
against Bulgaria

The European Court of Human Rights (First Section), sitting on 10 April 2003 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 9 April 1997,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the partial decision of 20 April 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, S.H.K., is a Bulgarian national who was born in 1946 and lives in Vratsa, Bulgaria. He was not legally represented. The respondent Government were represented by Mrs G. Samaras, co-agent, of the Ministry of Justice.

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

A. First (1991-98) set of criminal proceedings against the applicant

On 20 December 1990 police officers conducted a search at the premises of the applicant's and his wife's private company. During the search the applicant allegedly behaved violently and used offensive language against the officers.

On 14 January 1991 criminal proceedings were opened against the applicant on allegations of hooliganism coupled with resistance against an official and of insulting an official. In the context of the same criminal proceedings the applicant's wife was accused of having charged unlawfully high prices for services performed by the company, in violation of the then existing pricing rules.

On an unknown later date the applicant was charged.

On 27 November 1991 the prosecution filed an indictment against the applicant and his wife with the Vratsa District Court.

A hearing was held on 17 February 1992 at which the applicant's wife stated that she had worked at the court and requested that the judge withdraw from the case. The judge did so and adjourned the case.

On an unknown date the case was assigned to a new judge.

A hearing listed for 14 May 1992 had to be adjourned because the applicant's wife was ill and could not attend.

A hearing was held on 29 June 1992. The applicant's wife requested the judge's withdrawal, because the latter had previously worked at the police. The judge withdrew and adjourned the case.

On 13 November 1992 the case was assigned to a new judge.

A hearing fixed for 20 January 1993 was rescheduled for 21 April 1993 because the applicant could not appear.

On 5 April 1993 the applicant requested that the case be examined by a different court, arguing that he could not receive a fair trial at the Vratsa District Court.

As a result of that request on an unknown date the president of the court assigned the case to a new judge.

A hearing was held on 22 September 1993. Two prosecution witnesses were questioned but several others failed to appear. The applicant's wife

requested the severing of the prosecution against her from that against the applicant.

The next hearing took place on 3 November 1993. Four prosecution witnesses were questioned but a number of others were absent.

The next hearing was held on 23 February 1994. The applicant and his wife requested the withdrawal of the prosecutor, because he was "their personal enemy". The court rejected that request. The applicant also requested that the case be adjourned so that three defence witnesses could be called.

A hearing took place on 22 June 1994. Six properly subpoenaed witnesses did not show up. Four others, not properly subpoenaed, were absent as well.

The next hearing was held on 5 October 1994. The applicant and his wife requested the withdrawal of the prosecutor participating in the case. The court rejected that request. Two witnesses were questioned but five others, properly subpoenaed, failed to show up.

The next hearing took place on 9 November 1994. Two properly subpoenaed witnesses did not appear. The others, not properly subpoenaed, did not show up either. The court delivered its judgment, finding the applicant and his wife guilty as charged.

On 18 November 1994 the applicant and his wife each filed an appeal against the judgment with the Vratsa Regional Court.

A hearing was held on 15 December 1994.

On 23 January 1995 the Vratsa Regional Court, finding that the lower court had not gathered all material evidence and had not fully established the facts, quashed the judgment and remitted the case to the stage of the preliminary investigation.

In February 1995 the case was assigned to a new investigator, the original one having left office.

On 12 February 1996 the applicant was charged anew. The investigator drew up a proposal for the applicant's committal for trial.

On 20 March 1996 the Vratsa District Prosecutor's Office discontinued the criminal proceedings against the applicant's wife, as it was found that at the relevant time there were no prices fixed by law for the services she had provided. Thus, she could not have violated the pricing rules. Accordingly, from that point on the criminal proceedings continued only against the applicant.

On 5 April 1996 the prosecution filed a new indictment against the applicant with the Vratsa District Court.

A hearing was held on 14 October 1996. One witness appeared and was questioned. Several other properly subpoenaed witnesses failed to appear.

The next hearing took place on 23 October 1996. Two witnesses showed up and were questioned. Another witness was not properly subpoenaed and did not show up.

On 9 January 1997 the applicant requested the case be heard by a different court. That motion was denied.

The next hearing was held on 12 March 1997. The remaining witness, although properly subpoenaed, did not show up. The court adjourned the hearing and fined the witness.

The last hearing before the Vratsa District Court was held on 7 April 1997. The court delivered its judgment, finding the applicant guilty of hooliganism and of insulting an official. It sentenced the applicant to four months' imprisonment, suspended, to a fine of 500 old Bulgarian levs[1], and to a public reprimand.

On 9 April 1997 the applicant filed an appeal against the judgment with the Vratsa Regional Court.

A hearing was held on 5 June 1997.

The Vratsa Regional Court dismissed the appeal by judgment of 20 June 1997.

On 4 July 1997 the applicant submitted a petition for review to the Supreme Court of Cassation.

A hearing was held on 26 January 1998.

On 16 February 1998 the Supreme Court of Cassation reversed the applicant's conviction for hooliganism and acquitted him of that charge and upheld the remainder of the lower courts' judgments.

B. Second (1994-2002) set of criminal proceedings against the applicant

Criminal proceedings were opened against the applicant on 22 June 1994 for having threatened another person with murder.

A witness was questioned on 9 August 1994.

Two other witnesses were questioned on 15 May and 25 June 1996.

The applicant was questioned as a witness on 23 August 1996. According to his submissions, it was only then that he became aware of the proceedings. On the same date the investigator commissioned an graphological expert report to determine whether a threat note left in the victim's postal box was written by the applicant.

The expert report was ready on 25 September 1996.

On 7 October 1996 the applicant was officially charged. The applicant objected to the authenticity of the threat note.

On 21 October 1996 the investigator rejected the objection and on 22 October 1996 recommended that the applicant be committed for trial.

On 5 December 1996 the prosecution filed an indictment against the applicant with the Vratsa District Court.

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1. Equal to 0.3 USD at the relevant time

On 15 January 1997 the judge to whom the case was assigned fixed a hearing for an unspecified date.

On 1 April 1997 the applicant requested the judge's withdrawal, because his wife had commenced a civil action against the judge for having insulted her in public.

On 7 April 1997 the Vratsa Regional Court granted the request and assigned the case to a new judge.

On 8 April 1997 the applicant requested that his case be examined by a different court, because all judges in the Vratsa District Court were "biased".

On 14 May 1997 the case was transferred to the Biala Slatina District Court.

On 13 October 1997 the Biala Slatina District Court fixed a hearing for 13 March 1998.

On 20 January 1998 the applicant asked the court to reschedule the hearing for a later date, because on 13 March 1998 he had to attend a hearing in another case in a different town. The court rescheduled the hearing for 25 September 1998.

The hearing took place on 25 September 1998. The prosecutor requested the court to remit the case to the phase of the preliminary investigation, stating that the available evidence was not sufficient to sustain a finding of guilt and that certain witnesses had not been questioned. The court granted the request over the objection of the applicant.

On 5 October 1998 the applicant filed an interlocutory appeal against the remitting of the case. On 21 October 1998 he amended his appeal.

On 5 November 1998 the Vratsa Regional Court declared the interlocutory appeal inadmissible.

On 9 November 1998 the applicant appealed against the latter decision to the Supreme Court of Cassation.

On 12 January 1999 the Supreme Court of Cassation rejected the appeal.

The case file was returned to the prosecution, which forwarded it to the investigation authorities on 22 March 1999.

On 30 July 2001 the applicant was charged anew.

On 5 September 2001 the investigator, having completed the gathering of evidence, forwarded the case to the Vratsa District Prosecutor's Office.

On 11 October 2001 the Vratsa District Prosecutor's Office decided to discontinue the proceedings because the relevant limitation period had expired in July 2001.

On appeal by the applicant the prosecution's decision was upheld by the Vratsa District Court on 3 December 2001, by the Vratsa Regional Court on 11 February 2002, and by the Supreme Court of Cassation on 11 July 2002.

C. Third (1996-2000) set of criminal proceedings against the applicant

On 23 July 1996 the Vratsa District Prosecutor's Office opened criminal proceedings against the applicant for libel against a municipal officer through a newspaper publication.

Several witnesses were questioned on 19, 21 and 22 August 1996.

The applicant was charged on 23 August 1996. He was questioned.

On 23 September 1996 the investigator recommended that the applicant be committed for trial.

On 18 December 1996 the Vratsa District Prosecutor's Office returned the case to the investigator with instructions to check which person of the newspaper's staff had allowed the publication and to charge that person as an abettor.

The applicant was charged anew on 20 February 1997.

On 4 March 1997 the newspaper's editor was charged with having abetted the applicant to commit libel.

The applicant was again allowed to consult the case file on 10 March 1997.

On 11 March 1997 the libelled municipal officer, who had joined the proceedings as a civil claimant, was allowed to consult the case file.

On 1 April 1997 the investigator recommended the applicant's and editor's committal for trial.

On 2 May 1997 the Vratsa District Prosecutor's Office, finding that the editor was an "official" within the meaning of the Criminal Code, returned the case to the investigator with instructions to charge him accordingly (under Article 148 § 1 (4) of the Bulgarian Criminal Code libel committed by an "official" is an aggravated offence).

On 11 July 1997 an amended charge was levelled against the editor.

On 25 July 1997 the prosecution filed an indictment against the applicant with the Vratsa District Court. It seems that it decided to drop the charges against the editor.

On 12 August 1997 the applicant requested that all judges from the Vratsa District Court refrain from examining the case because he considered them biased on account of the other cases against the applicant examined by that court. In the following days all judges stated that they wished to withdraw from the case.

On 9 January 1998 the chairperson of the Vratsa Regional Court assigned the case to a judge from the Mezdra District Court.

On 9 March 1998 the applicant requested that the case be referred back to the investigation with instructions to charge the municipal officer for having "insulted his wife". The applicant's wife submitted to the court a

civil claim against the officer, to be examined in the framework of the criminal proceedings.

On 18 March 1998 the applicant submitted new materials to the court.

On 8 May 1998 the court terminated the proceedings and referred the case back to the investigating authorities. It found that the applicant had not been properly charged, as the charging documents had not described correctly the legal characterisation of the offence. Also, there was a discrepancy between the legal characterisation of the offence in the charge and in the ensuing indictment, which prejudiced the applicant's defence rights.

On 26 June 1998 the applicant was presented with the amended charges. He submitted additional observations on the case.

On 29 June 1998 the investigator recommended the applicant's committal for trial.

On 23 July 1998 the prosecution filed an indictment against the applicant with the Vratsa District Court.

On 3 December 1998 the applicant requested that the case be examined as a "political one, because the justice in Vratsa [did] not apply the law correctly".

In January 1999 all judges of the Vratsa District Court withdrew from the case.

On 26 February 1999 the chairperson of the Vratsa Regional Court ordered that the case be transferred to the Mezdra District Court.

On 2 March 1999 the Mezdra District Court listed the case for hearing on 7 May 1999.

On 26 April 1999 the Mezdra District Court rescheduled the hearing for 28 May 1999, 7 May having been declared a non-working day by the Council of Ministers.

On 27 May 1999 the president of the Vratsa District Prosecutor's Office notified the court that all prosecutors from that office wished to withdraw from the case because of the applicant's constant complaints and recriminations against them.

A hearing was held on 28 May 1999. The court granted the prosecution's request, finding that the strained relations between the applicant and them could infringe their objectivity.

On 2 June 1999 the Vratsa Regional Prosecutor's Office assigned the case to a prosecutor from a different district.

The next hearing was held on 9 July 1999. The court delivered its judgement, finding the applicant guilty and sentencing him to eight months' imprisonment, suspended, and public reprimand.

On 15 July 1999 the applicant filed an appeal against the judgment. He requested that the appeal should not be examined by the Vratsa Regional Court.

In July and August 1999 all judges from the Vratsa Regional Court withdrew from the case.

On 16 September 1999 the case was sent to the Supreme Court of Cassation with a view to determining a different court to examine the appeal.

On 30 September 1999 the Supreme Court of Cassation returned the case to the Vratsa Regional Court with instructions to examine the appeal.

By judgment of 18 November 1999 the Vratsa Regional Court dismissed the appeal.

The applicant filed an appeal on points of law with the Supreme Court of Cassation.

A hearing was held on 10 March 2000.

On 10 May 2000 the Supreme Court of Cassation upheld the lower court's judgment.

COMPLAINTS

The applicant complained under Article 6 of the Convention about the length of the three sets of criminal proceedings against him.

THE LAW

1. In respect of his complaints about the length of the criminal proceedings the applicant relied on Article 6 of the Convention which in its relevant part provides as follows:

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

2. The Government raised the objection that the application was an abuse of the right of application. Referring to the numerous civil actions and complaints to the prosecution authorities made by the applicant and his wife, they submitted that the applicant had exercised his procedural rights in bad faith and had made frequent ill-founded requests with the intention to discredit government bodies and officials. In the Government's view, that was also evidenced by the manner in which the applicant had acted throughout the criminal proceedings against him.

The applicant replied that the numerous complaints and requests he had made in the course of the criminal proceedings had been his only means of protection from the unfounded allegations against him. His other claims and complaints had also been made in pursuance of his legitimate interests.

The Court observes that the Government's assertion of an abuse of the right of application could only be accepted if it were clear that the application was based on untrue facts (see *Aksoy v. Turkey*, no. 21987/93, Commission decision of 19 October 1994, Decisions and Reports 79, p. 60, at p. 71, and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). However, the Court does not consider this to be the case. Insofar as the Government may be understood to submit that the applicant's conduct contributed to the delay in the criminal proceedings, that issue goes to the merits of the complaint.

It follows that the Government's objection must fail.

3. a) As regards the first (1991-98) set of criminal proceedings, the Government submitted that the case had been complex, involving different charges against two co-accused. This had entailed the gathering of a lot of evidence and the questioning of no less than twenty witnesses. Another complexity factor had been the need to assign the case to different judges due to the applicant's and his wife's requests. As to the conduct of the applicant, the Government maintained that the disorganised manner in which he had exercised his rights slowed the proceedings substantially. In particular, the applicant had made several belated challenges of the judges examining his case. Also, he had consented to most of the adjournments due to non-appearance of witnesses. As regards the conduct of the authorities, the Government argued that they had showed the requisite diligence. The long delay after the returning of the case to the preliminary investigation phase had been due to the retreat of the investigator originally in charge and hence the time needed for his replacement. Hearings before the trial court – both during the first and the second judicial examination of the case – had been held at regular intervals. As to the Vratsa Regional Court and Supreme Court of Cassation, they had showed remarkable expeditiousness.

The applicant disputed the Government's assertion that the case was complex. He submitted that delays had occurred mostly because of problems with non-attendance of prosecution witnesses. As to his and his wife's challenges to the judges, they did not explain the prolonged periods between hearings. Also, there had been no justification for the idle period of more than one year between the returning of the case to the preliminary investigation phase and the applicant's subsequent charging. Moreover, the returning itself had not been necessary as no new facts had been established.

The Court notes at the outset that the proceedings commenced on 14 January 1991 and ended on 16 February 1998. Their total length was thus seven years, one month and two days. The Court, however, is only competent to deal with the period after 7 September 1992, when the Convention entered into force for Bulgaria. The period to be taken into consideration is thus five years, five months and nine days for five levels of court. Nevertheless, the Court must also have regard to the state of the proceedings on 7 September 1992 (see *Proszak v. Poland*, judgment of

16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31).

The Court recalls that the reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the authorities dealing with the case, as well as what was at stake for the applicant (see *Klamecki v. Poland*, no. 25415/94, § 87, 28 March 2002, unreported).

As to the complexity of the proceedings, the Court observes that they concerned the applicant's violent behaviour and the offensive language he had used towards police officers. Until March 1996 they also concerned another offence allegedly committed by the applicant's wife, namely having charged unlawfully high prices for services performed by her company, in violation of the then existing pricing rules. The first of these matters was not of great factual or legal complexity, but it may be said that the second bore a certain degree of complexity.

As to the conduct of the authorities, the Court notes that a period of approximately one year of inactivity occurred after the remitting of the case by the Vratsa Regional Court to the stage of the preliminary investigation. The Court further observes that a number of hearings before the Vratsa District Court were adjourned because witnesses failed to comply with subpoenas to appear. On the whole, the hearings in the case were scheduled at regular intervals, and when they were adjourned it was mostly for reasons which cannot be attributed to the court. Moreover, the Vratsa Regional Court twice disposed of the applicant's appeals in an expeditious manner, as did the Supreme Court of Cassation.

As to the conduct of the applicant, and that of his wife (delays stemming from her conduct, although not imputable to the applicant, were an objective factor which cannot be held against the authorities), the Court notes that they antagonised the judges dealing with their case and made a significant number of belated requests for their withdrawals, which inevitably caused delay. The Court also notes that two hearings had to be adjourned because the applicant or his wife could not attend. On the whole, the Court considers that the applicant considerably contributed to the prolongation of the proceedings.

Thus, having regard to the overall length of the period to be taken into consideration and also to the applicant's conduct, the Court concludes that the proceedings did not exceed a reasonable time.

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

b) In respect of the second (1994-2002) set of criminal proceedings, the Government contended that the case was made complex by the numerous complaints and appeals filed by the applicant, as well as by his challenges to

the judges. Referring to their arguments in respect of the first set of criminal proceedings, the Government maintained that the applicant had caused much of the delay through the manner in which he had exercised his procedural rights. More specifically, the applicant had waited for several months before making the challenges and had also filed clearly inadmissible appeals against the trial court's decision to remit the case for further investigation.

The applicant disputed the claimed complexity of the case. He submitted that most of the delay had been caused by the lengthy periods between hearings and by the remitting of the case to the stage of the preliminary investigation. As to the appeal against the remitting, he had filed it in order to speed up the proceedings.

The Court considers, in the light of the criteria established by its case-law on the question of "reasonable time", and having regard to all the material in its possession, that an examination of the merits of the complaint is required.

c) In respect of the third (1996-2000) set of criminal proceedings, the Government maintained that the case was made complex by the numerous requests of the applicant. As to the applicant's conduct, they submitted that his belated requests for withdrawals of the judges and for having his case examined outside of Vratsa had substantially slowed the proceedings. As to the authorities, they had acted with considerable swiftness despite the obstructions created by the applicant.

The applicant contended that the proceedings had been substantially slowed down in that the prosecution and later the trial court had remitted the case to prior stages of the procedure. He also submitted that there had been long periods between the hearings. All his requests had been made in protection of his legitimate interests.

The Court notes that the proceedings were opened on 23 July 1996 and that the applicant was charged on 23 August 1996. The proceedings ended with the Supreme Court of Cassation's judgment of 10 May 2000. The period to be taken into account is thus three years, nine months and seventeen days for three levels of court.

Although the case does not appear to have been complex, the Court is of the opinion that the amount of time taken for its examination was reasonable in the circumstances. Certain delays – those resulting from the repeated transmittals of the case by the prosecution to the investigator and from the remitting of the case by the Mezdra District Court – may be attributed to the authorities, but they do not appear to have resulted in an excessive increase of the duration of the proceedings as a whole. In this connection, the Court notes that the Vratsa Regional Court and the Supreme Court of Cassation disposed of the case in very short periods. Account must also be taken of the fact that the applicant's repeated challenges to the judges accounted for at least part of the accumulated delay. In sum, and especially having regard to

the overall length of the proceedings, the Court finds that they do not appear to have lasted unreasonably long.

It follows that this complaint 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 admissible, without prejudging the merits, the applicant's complaint concerning the length of the 1994-2002 criminal proceedings against him;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Deputy Registrar

Christos ROZAKIS
President