



Systemic problem of ineffectiveness of investigations in Bulgaria

In today's **Chamber judgment**¹ in the case of [S.Z. v. Bulgaria](#) (application no. 29263/12) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights on account of the shortcomings in the investigation carried out into the illegal confinement and rape of the applicant, having regard in particular to the excessive delays in the criminal proceedings and the lack of investigation into certain aspects of the offences.

The Court found it to be a cause of particular concern that the authorities had not deemed it necessary to examine the applicant's allegations of the possible involvement in this case of an organised criminal network of trafficking in women.

The Court also observed that it had already, in over 45 judgments against Bulgaria, found that the authorities had failed to comply with their obligation to carry out an effective investigation and considered that these recurrent shortcomings disclosed the existence of a systemic problem. It considered that it was incumbent on Bulgaria, in cooperation with the Committee of Ministers, to decide which general measures were required in practical terms to prevent other similar violations of the Convention in the future.

Principal facts

The applicant, S. Z., is a Bulgarian national who was born in 1977 and lives in Sofia (Bulgaria).

On 19 September 1999 S.Z., who was then a student aged 22, left Sofia for Blagoevgrad in a car with two young men, who during the journey told her that they intended to "sell" her as a prostitute. She was taken to a flat where she was held against her will and repeatedly beaten and raped by several men for about 48 hours before managing to escape. In the course of being interviewed by the police, who had been alerted by the occupants of the flat where S.Z. had taken refuge, the applicant attempted to throw herself out of the window.

A criminal investigation was instituted. The applicant identified two of her assailants in particular and two police officers with whom they had allegedly spoken before holding her against her will. She also stated that the men were part of a criminal gang involved in human trafficking who wanted to force her into prostitution in western Europe. The investigation was closed four times and the case sent back for further investigation on the grounds that the necessary investigative measures had not been carried out or that procedural irregularities had been committed.

In 2007 seven defendants were committed for trial in the Blagoevgrad District Court on charges of false imprisonment, rape, incitement to prostitution or abduction for the purposes of coercing into prostitution. Twenty-two hearings were held, about ten of which were adjourned mainly on grounds of irregularities in summoning the accused or witnesses. In a judgment of 27 March 2012 five of the accused were convicted and given prison sentences and fines. Of the two other accused, one was acquitted and the proceedings against the other one were declared time-barred. In a final judgment

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

of 11 February 2014 one of the convictions was set aside on the grounds that it was time-barred and the prison sentences of some of the other convicted prisoners were reduced.

Complaints, procedure and composition of the Court

Relying on Articles 3 (prohibition of inhuman or degrading treatment) and 8 (right to respect for private life), the applicant complained of the ineffectiveness of the criminal proceedings for the false imprisonment, assault, rape and trafficking in human beings perpetrated against her. She complained in particular of the lack of an investigation into the possible involvement of the two police officers and the failure to prosecute two of her assailants, and of the excessive length of time taken to investigate and try the case. She also submitted that the excessive length of the criminal proceedings, in as far as they concerned her claim for damages, had infringed the requirements of Article 6 § 1 (right to a fair hearing within a reasonable time). She submitted, lastly, that her case was illustrative of a certain number of recurring problems regarding the ineffectiveness of criminal proceedings in Bulgaria, in particular in cases of human trafficking.

The application was lodged with the European Court of Human Rights on 3 May 2012.

Judgment was given by a Chamber of seven judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Krzysztof **Wojtyczek** (Poland),
Nona **Tsotsoria** (Georgia),

and also **Françoise Elens-Passos**, *Section Registrar*.

Decision of the Court

Article 3²

The Court considered it appropriate to examine the applicant's complaints solely under Article 3.

With regard first of all to the criminal proceedings, the Court observed that these had lasted over 14 years in all – for the preliminary investigation and two levels of jurisdiction. That period appeared excessively long having regard to the obligation on the authorities to proceed speedily given that criminal proceedings had been instituted and some of the persons responsible had been committed for trial. The Court was not satisfied that such a delay could be explained by the complexity of the case.

The Court went on to observe that the investigation had been closed four times but the prosecutor had decided to send the case back for further investigation on the grounds that the necessary investigative measures had not been carried out or procedural irregularities had been committed.

² Regarding the question of the admissibility of the application, the Court rejected the objection raised by the Government concerning exhaustion of domestic remedies. It considered that the remedies available to the applicant under the Judiciary Act and the State Liability Act had been created with the specific aim of awarding compensation for the excessive length of judicial proceedings, but did not allow an examination to be undertaken as to whether the State had satisfied its procedural obligations under Article 3. With regard to the Government's submission that S.Z. had lodged her application prematurely (the case having been introduced before the Court before the end of the criminal proceedings), the Court held that this question was linked to an examination of the merits of the case.

That lack of diligence on the part of the authorities had delayed the investigation phase of the proceedings and resulted in the prosecution of certain less serious offences being time-barred.

Admittedly, S.Z. had not challenged the decision to drop the case against the two police officers she had identified. It was a cause for concern, however, that given the nature of the offences in the present case and despite the applicant's statements that her assailants were members of a network trafficking in women with a view to coercing them into prostitution abroad, the authorities had not considered it necessary to examine the possible involvement of an organised criminal network and had confined themselves to prosecuting the individuals directly responsible for the abduction and assault of the applicant. Likewise, the authorities had not taken concrete steps to find the two other people identified by the applicant.

Regarding, lastly, the judicial stage of the proceedings, which had started in 2007, the Court considered that the considerable length of those proceedings was not entirely justified by their complexity. Indeed, many hearings had been adjourned without an examination of the merits of the case on the grounds that some of the accused had not been properly summoned or had failed to appear.

The Court noted, further, that the excessive length of the proceedings had undeniably had negative repercussions on S.Z., who, clearly psychologically very vulnerable as a result of the attack, had been left in a state of uncertainty regarding the possibility of securing the trial and punishment of her assailants and had had to return to court repeatedly and go back over the events during the many examinations by the court.

The Court accordingly held that there had been a violation of Article 3.

Article 46 (binding force and execution of judgments)

The applicant, who submitted that her case was illustrative of recurrent problems regarding criminal proceedings, asked the Court to indicate to Bulgaria which individual and general measures should be adopted for the purposes of Article 46 of the Convention. That provision did allow the Court to assist the State in identifying ways in which the situation found to violate the Convention could be brought to an end. The Court reiterated, however, that it was primarily for the State to choose, subject to supervision by the Committee of Ministers of the Council of Europe, the means to be used in its domestic legal order to execute the Court's judgments.

The Court observed that it had already, in over 45 judgments³, found violations of the obligation to carry out an effective investigation in applications concerning Bulgaria. Among the reasons for these findings had been substantial delays in the investigation resulting in termination of the prosecution as time-barred; the exclusion of evidence or suspects by the authorities; and repeated refusals by the prosecutor to comply with the court's instructions regarding the preliminary investigation.

These recurrent shortcomings disclosed the existence of a systemic problem regarding the ineffectiveness of investigations in Bulgaria. However, the Court, being aware of the complexity of the problem, did not consider itself in a position to indicate which measures should be implemented in order to execute the judgment in the case of S.Z. It found that the Bulgarian authorities, in cooperation with the Committee of Ministers, were the best placed to decide which general measures were required – in practical terms – to prevent other similar violations in the future.

Article 41 (just satisfaction)

The Court held that Bulgaria was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs and expenses.

³ §§ 56 and 57 of the judgment *S.Z. v. Bulgaria*

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.