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

FIRST SECTION

CASE OF OSMANOV AND YUSEINOV v. BULGARIA

(Applications nos. 54178/00 and 59901/00)

JUDGMENT

STRASBOURG

23 September 2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Osmanov and Yuseinov v. Bulgaria,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 2 September 2004,

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

PROCEDURE

1. The case originated in two applications (nos. 54178/00 and 59901/00) 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 Mr Djemil Aliev Osmanov and Mr Ali Ramiz Yuseinov, Bulgarian nationals who were born in 1958 and 1964 respectively and live in the village of Aleko Konstantinovo, the Pazardjik region.

2. The applicants were represented by Mr V. Stoyanov, a lawyer practising in Pazardjik. The Bulgarian Government ("the Government") were represented by Mr S. Bojikov, Deputy-Minister of Justice and subsequently by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

3. The applicants alleged, in particular, that the criminal proceedings against them had lasted an unreasonable time and that they had not had effective remedies in this respect.

4. The applications were allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. By a decision of 4 September 2003 the Court decided to join the applications (former Rule 43 (now Rule 42) § 1) and declared them partly admissible.

6. The parties did not file observations on the merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1958 and 1964 respectively and live in the village of Aleko Konstantinovo, the Pazardjik region.

8. In December 1993 the applicants were questioned as suspects in the destruction of a walnut tree owned by a State-owned company.

9. On 16 February 1994 the Pazardjik District Prosecutor's Office opened criminal proceedings against the applicants.

10. The first applicant was charged on 11 December 1995. The second applicant was charged on an unspecified date in December 1995. Immediately after the charging the applicants were ordered not to leave the town without authorisation as a measure to secure appearance before the competent authority (see paragraph 21 below).

11. On 21 December 1995 the applicants were indicted. The prosecutor, acting on behalf of the State-owned company, also brought a civil claim for damages against them.

12. The Pazardjik District Court held its first hearing on 18 March 1996. It heard the applicants and questioned three witnesses. Finding that the facts of the case were in need of further clarification, the court ordered an expert report on the value of the walnut tree timber and decided to call another witness. It adjourned the case.

13. The expert report was ready on 9 April 1996.

14. The next hearing took place on 23 April 1996. The court heard the expert and admitted his report in evidence. It held that the facts were in need of further elucidation, ordered the expert to supplement his report and adjourned the case.

15. The supplementary expert report was ready on 3 June 1996.

16. A hearing listed for 25 June 1996 failed to take place because the applicants' lawyer was absent.

17. The next hearing was held on 9 August 1996. The prosecutor requested an additional expert report. The applicants' lawyer agreed. The court ordered an additional expert report and adjourned the case.

18. The next hearing took place on 26 September 1996. The court repealed its prior order for an additional expert report, admitted certain documents gathered during the investigation in evidence and heard the parties' closing argument. After deliberating in private, it found that a material breach of the rules of procedure had taken place during the investigation. In particular, the applicants had not been properly charged, which had infringed their defence rights. Accordingly, the court remitted the case to the prosecution authorities with instructions to rectify this shortcoming and also to gather additional evidence.

19. Since no progress took place in the remitted case, in August 1999 the applicants complained about the length of the proceedings to the Pazardjik Regional Prosecutor's Office and to the Chief Prosecutor's Office. On 24 August 1999 the Pazardjik Regional Prosecutor's Office sent the applicants' complaint to the Pazardjik District Prosecutor's Office. On 14 September 1999 the Chief Prosecutor's Office sent the applicants' complaint to the Pazardjik Regional Prosecutor's Office, ordering the prompt completion of the case. On 23 September 1999 the Pazardjik District Prosecutor's Office informed the Pazardjik Regional Prosecutor's Office and the applicants that the reason for the delay had been the failure of a witness to appear. It stated that measures had been taken for the speedy finalisation of the case.

20. On 18 March 2002 the Pazardjik District Prosecutor's Office, finding that the relevant limitation period had expired, discontinued the criminal proceedings against the applicants. It also lifted the prohibition on the applicants to leave the town without authorisation (see paragraph 21 below).

II. RELEVANT DOMESTIC LAW

21. Under Article 146 of the Code of Criminal Procedure ("CCP"), a measure to secure appearance before the competent authority must be imposed in respect of every person accused of having committed a publicly prosecuted offence.

The most lenient such measure is a written undertaking by the accused that he or she will not leave his or her place of residence without authorisation by the respective authority – the prosecutor or the court, depending on the stage of the proceedings (Article 149 of the CCP).

THE LAW

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

22. The applicants alleged that the criminal proceedings against them had lasted an unreasonable time, in breach of Article 6 § 1 of the Convention.

Article 6 § 1 reads, as relevant:

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

A. Period to be taken into consideration

23. The period started to run either in December 1993, when the applicants were first questioned as suspects (see paragraph 8 above), or on 16 February 1994, when the criminal proceedings were opened (see paragraph 9 above), or in December 1995, when the applicants were charged (see paragraph 10 above). Having regard to its findings below, the Court considers that it is not necessary to determine this point (see *Ilijkov v. Bulgaria*, no. 33977/96, § 111, 26 July 2001). The period ended on 18 March 2002, when the Pazardjik District Prosecutor's Office discontinued the proceedings (see paragraph 20 above). Its length was thus at least six years and three months for one level of court.

B. Reasonableness of the length of the proceedings

24. Having left to the Court to decide on the admissibility of the complaint, the Government did not comment on its merits.

25. The applicants submitted that apparently the Government could not present any viable arguments against the admissibility of the complaint. According to them, Article 6 of the Convention had been breached by reason of the length of the proceedings.

26. The Court will assess the reasonableness of the length of the proceedings in the light of the circumstances of the case and having regard to the criteria laid down in its case-law, in particular the complexity of the case and the conduct of the applicants and of the relevant authorities. On the latter point, what was at stake for the applicants has also to be taken into account (see *Portington v. Greece*, judgment of 23 September 1998, *Reports of Judgments and Decisions* 1998-VI, p. 2630, § 21 and *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

27. The case does not seem factually or legally complex (see paragraph 8 above).

28. The Court does not consider that the applicants have obstructed the investigation or have contributed to the delays in the case, apart from the adjourning of one hearing on 25 June 1996 (see paragraph 16 above), which resulted in a month and a half of delay.

29. As far as the conduct of the authorities is concerned, the Court is of the view that the Pazardjik District Court may be considered responsible for nine months of delay, from December 1995 until September 1996, because it failed to spot at the outset the breach of the rules of procedure which eventually led it to remit the case to the prosecution authorities (see paragraph 18 above). However, the most significant period of inactivity occurred from September 1996, when the case was remitted to the prosecution authorities, until 18 March 2002, when the proceedings were discontinued (see paragraphs 19 and 20 above). It seems that no

investigative actions were performed during that time. The Government have not provided any explanation for this gap of about five and a half years, during which time the proceedings remained practically dormant.

30. Having regard to the criteria established in its case-law and making an overall assessment, the Court finds that the length of the criminal proceedings against the applicants failed to satisfy the reasonable time requirement of Article 6 § 1 of the Convention.

It follows that there has been a violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

31. The applicants alleged that they had not had effective remedies against the unreasonable length of the criminal proceedings against them. They relied on Article 13 of the Convention, which provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

32. The applicants submitted that they had tried to expedite the proceedings by complaining to the prosecution authorities, to no avail. However, these complaints did not constitute an effective remedy for the purposes of Article 13 of the Convention. In their view, Bulgarian law did not provide such a remedy.

33. The Government did not comment on this complaint.

34. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an arguable complaint under the Convention and to grant appropriate relief.

35. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicants' complaints. However, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Kudła*, cited above, § 157).

36. Remedies available to an accused at domestic level for raising a complaint about the length of proceedings are "effective", within the meaning of Article 13, if they "[prevent] the alleged violation or its continuation, or [provide] adequate redress for any violation that [has] already occurred" (see *Kudła*, cited above, § 158). Article 13 therefore offers an alternative: a remedy will be considered "effective" if it can be used either to expedite a decision by the courts dealing with the case, or to provide the accused with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.)[GC], no. 57220/00, ECHR 2002-VIII).

37. Having regard to its conclusion in respect of the applicants' complaint under Article 6 § 1 (see paragraph 30 above), the Court is of the view that the complaint was arguable. The Court must therefore determine whether, in the particular circumstances of the present case, there existed in Bulgarian law any means for obtaining redress in respect of the length of the proceedings.

38. The Court first notes that the Government have not indicated – and the Court is not aware – of any formal remedy under Bulgarian law, as it stood at the relevant time, that could have expedited the determination of the criminal charges against the applicants or provided them with adequate redress for the delays that had occurred.

39. The Court further notes that in an effort to expedite the criminal proceedings the applicants complained about the delay to the Pazardjik Regional Prosecutor's Office and the Chief Prosecutor's Office (see paragraph 19 above). However, the Court considers that the possibility to appeal to the various levels of the prosecution authorities cannot be regarded as an effective remedy because such hierarchical appeals aim to urge the authorities to utilise their discretion and do not give the accused a personal right to compel the State to exercise its supervisory powers (see *Gibas v. Poland*, no. 24559/94, Commission decision of 6 September 1995, Decisions and Reports 82, p. 76, at p. 82, *Kuchař and Štis v. the Czech Republic* (dec.), 37527/97, 23 May 2000, *Horvat v. Croatia*, no. 51585/99, §§ 47 and 64, ECHR 2001-VIII and *Hartman v. the Czech Republic*, no. 53341/99, § 66, ECHR 2003-VIII (extracts)).

40. In sum, the Court finds that in the present case the applicants did not have at their disposal any domestic remedies whereby they could have expedited the examination of the criminal charges against them.

41. Furthermore, as regards compensatory remedies, the Court has not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings.

42. Accordingly, there has been a violation of Article 13 of the Convention in that the applicants had no domestic remedy whereby they could enforce their right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. Each of the applicants claimed 6,500 euros ("EUR") in compensation for non-pecuniary damage. They submitted that they had suffered frustration and insecurity on account of the excessive length of the proceedings and the lack of effective remedies in this respect. Moreover, throughout the pendency of the proceedings they had been prevented from leaving their place of residence. Finally, referring to some of the Court's judgements in previous length-of-proceedings cases, the applicants argued that the mere finding of a violation would not be sufficient.

45. Referring to some of the Court's judgments in previous length-of-proceedings cases against Bulgaria, the Government submitted that the amount of compensation awarded by the Court should not exceed what was reasonable in similar circumstances. In the Government's view, the amount awarded by the Court under this head should be commensurate to the principles of justice and take into account the living standards in Bulgaria.

46. The applicants replied that that cases cited by the Government were inapposite, because they concerned much lesser delays.

47. In the Court's view, it is reasonable to assume that the applicants have suffered distress and frustration on account of the unreasonable length of the proceedings and the lack of any remedies in this respect. Taking into account the circumstances of the case and making its assessment on an equitable basis, the Court awards the first applicant the sum of EUR 3,000 and the second applicant the sum of EUR 3,000.

B. Costs and expenses

48. Each of the applicants claimed EUR 3,500 for 70 hours of work on the Strasbourg proceedings, at the hourly rate of EUR 50. They requested that the amounts awarded by the Court under this head should be paid directly to their legal representative, Mr V. Stoyanov.

49. The Government submitted that the applicants' claims were overly elevated and unfounded. They drew attention to the fact the some of the applicants' complaints had been declared inadmissible. The Government also contested the number of hours which the applicants' lawyer had

allegedly spent working on the case. They submitted that the criminal proceedings were conducted against both applicants and that the applicants' applications were identical. Moreover, the case was not complex and they had not presented any arguments against the admissibility of the applications to which the applicants' lawyer would have had to answer. Finally, the Government pointed out that the applicants' lawyer had written in all not more than twenty-five pages.

50. The applicants replied that the fact that their applications were very similar and had hence been joined did not mean that the work done by their lawyer was less. They further averred that the conciseness of their lawyers' briefs did not mean that less work had gone into these briefs.

51. The Court notes that the applicants have submitted a fees agreement and their lawyer's time-sheet concerning work done on their case and that they have requested that the costs and expenses incurred should be paid directly to their lawyer, Mr V. Stoyanov.

52. The Court considers that the number of hours claimed seems excessive and that a reduction is necessary on that basis. It also considers that a reduction should be applied on account of the fact that some of the applicants' complaints were declared inadmissible (see paragraph 5 above). The Court further observes that the same lawyer represented before it both applicants (see paragraph 2 above), who were, moreover, co-accused in the same criminal proceedings. In these circumstances, having regard to the overlap in the facts and complaints in their applications, the Court considers that a further reduction is appropriate.

53. Having regard to all relevant factors, the Court considers it reasonable to award jointly to the two applicants the sum of EUR 1,000, to be paid directly to the applicants' lawyer, Mr V. Stoyanov.

C. Default interest

54. 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. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 13 of the Convention;

3. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage to the first applicant, Mr Djemil Aliev Osmanov;

(ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage to the second applicant, Mr Ali Ramiz Yuseinov;

(iii) EUR 1,000 (one thousand euros) in respect of costs and expenses, to the applicants' lawyer, Mr V. Stoyanov;

(iv) any tax that may be chargeable on the above amounts;

(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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President