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

FIRST SECTION

CASE OF ZHBANOV v. BULGARIA

(Application no. 45563/99)

JUDGMENT

STRASBOURG

22 July 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 Zhbanov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 1 July 2004,

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

PROCEDURE

1. The case originated in an application (no. 45563/99) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Vladimir Nikolaevich Zhbanov, a Russian national born in 1950 and living in Kiev, Ukraine, on 24 March 1998.

2. The applicant was not legally represented. The Bulgarian Government ("the Government") were represented by Mr S. Bojikov, Deputy-Minister of Justice and subsequently by their Agent, Ms M. Dimova, of the Ministry of Justice. The Russian Government, having been informed by the Section Registrar by a letter of 16 September 2003 of their right to intervene (Article 36 § 1 of the Convention and former Rule 61 of the Rules of Court), did not avail themselves of this right.

3. The applicant alleged, in particular, that the criminal proceedings against him had lasted unreasonably long.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

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

6. By a decision of 13 December 2001 the Court declared the application partly inadmissible.

7. By a decision of 19 June 2003 the Court declared the application partly admissible.

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

THE FACTS

9. The applicant was born in 1950 and lives in Kiev, Ukraine.

10. On 16 February 1994 the applicant, who was then residing in Bulgaria, was questioned as a suspect in the embezzlement of 20,000 Bulgarian levs (BGL) from a cooperative farm in liquidation whose legal counsel he had been.

11. On 30 March 1994 criminal proceedings were opened against the applicant.

12. On 27 July 1994 he was questioned.

13. On 29 July 1994 a graphological expert report was drawn up.

14. On 12 December 1994 the applicant was charged with embezzlement, falsification of official documents and false accusation of another. He was ordered to post bail in the amount of BGL 2,000. Under the then applicable provisions of the Code of Criminal Procedure ("the CCP"), an accused on bail could leave the country only with the prosecutor's or the court's permission.

15. On 23 February 1995 the applicant's apartment was attached by order of the investigator in charge of the case, apparently as a security for an impending civil claim by the victim of the offences alleged against the applicant. On the same date the applicant was allowed to consult the case file and was questioned.

16. On 15 March 1995 the applicant was detained. He was released on 21 March 1995.

17. On 15 March 1995 a technical expert report was drawn up.

18. On 27 March 1995 the applicant was questioned.

19. On 30 March 1995 another expert report was drawn up.

20. On 4 April 1995 the applicant was questioned.

21. On 5 April 1995 the investigator completed his work on the case and recommended that the applicant be indicted.

22. On 4 May 1995 the applicant was questioned.

23. On 2 June 1995 a prosecutor of the Popovo District Prosecutor's Office presented the applicant with amended charges and questioned him.

24. By a decree of 28 March 1996 the Popovo District Prosecutor's Office, finding that the applicant had not obstructed the criminal proceedings and that there was no danger of him absconding, allowed him to leave Bulgaria for one and a half months to visit his parents in Kiev, Ukraine.

25. The prohibition against the applicant leaving the country without prior permission by the prosecutor or the court was in force at least until 1 January 2000, when the CCP was amended.

26. On 12 September 2001 a prosecutor of the Popovo District Prosecutor's Office presented all materials in the case file to the applicant.

27. On 14 September 2001 the Popovo District Prosecutor's Office, noting that the relevant limitation period had expired, decided to drop the charges of falsification of official documents. On the same date it indicted the applicant for having embezzled BGL 20,000 and having falsely accused another of a serious offence.

28. On 15 December 2001 the applicant left Bulgaria and went to Ukraine, where he has resided ever since.

29. The first hearing in the applicant's case, listed by the Popovo District Court for 17 December 2001, was adjourned because the applicant and several witnesses, despite being duly summoned, were absent.

30. A hearing fixed for 8 April 2002 was also adjourned because the applicant was not present.

31. A hearing listed for 3 June 2002 was likewise adjourned because of the applicant's absence.

32. At the time of the latest relevant information from the parties (June 2002) the proceedings were still pending before the Popovo District Court.

THE LAW

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

33. The applicant alleged that the criminal proceedings against him 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

34. The applicant was first questioned as a suspect on 16 February 1994 and the criminal proceedings were formally opened on 30 March 1994 (see paragraphs 10 and 11 above). At the time of the latest information from the parties (June 2002) the proceedings were still pending before the first-instance court (see paragraph 32 above). The period to be taken into consideration thus lasted at least eight years and four months.

B. Reasonableness of the length of the proceedings

1. Arguments of the parties

35. The applicant maintained that the length of the criminal proceedings against him had been entirely due to the conduct of the authorities. They had failed to comply with the domestic law provisions on the time-limits for concluding an investigation and had failed to bring the proceedings to an end for more than eight years. Moreover, throughout the proceedings he had been unable to dispose of his apartment.

36. The Government submitted that, despite being duly summoned, the applicant had failed to appear at the hearing listed for 17 December 2001. It had been impossible to summon him for the subsequent hearings because he had left Bulgaria in December 2001 and had not returned despite the fact that criminal proceedings were pending against him. This conduct indicated that the applicant's stance toward the speedy conclusion of the proceedings was dubious.

2. The Court's assessment

37. 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 applicant and of the relevant authorities. On the latter point, what was at stake for the applicant 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).

38. As regards the complexity of the case, it does not appear that the proceedings were characterised by any extreme factual or legal difficulty. Concerning what was at stake for the applicant, the Court notes that during the pendency of the proceedings the applicant's apartment was attached, which has prevented him from disposing of it for more than eight years (see paragraph 15 above). The Court also notes that during the period 1994-99 the applicant was prohibited from travelling abroad without permission from the authorities (see paragraphs 14, 24 and 25 above).

39. Concerning the applicant's conduct, the Court notes that the only delays attributable to him occurred after December 2001, when three hearings had to be adjourned because he was out of Bulgaria (see paragraphs 28-31 above).

40. Regarding the conduct of the authorities, the Court notes that no activity occurred in the case between June 1995 and September 2001, i.e. for a period of more than six years (see paragraphs 23-26 above). The Government have not offered any justification for this period of inactivity.

41. 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 applicant 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 25,000 euros (EUR) in compensation for pecuniary and non-pecuniary damage. He submitted that (i) in 1995 he had been detained for seven days and kept in bad conditions, that (ii) thereafter he had to pay BGL 2,000 in bail, that (iii) he could only leave the country with permission from the authorities, that (iv) his professional skills had suffered as a result of the proceedings, that (v) his apartment had been attached, and that (vi) because of the proceedings he could not obtain Bulgarian citizenship and thus practice as an advocate.

44. The Government submitted that there was no indication that the applicant had intended to apply for Bulgarian citizenship and practice as an advocate. Moreover, from the institution of the criminal proceedings in 1994 until he left Bulgaria 2001 the applicant had worked as an in-house lawyer and liquidator for two companies. They hence invited the Court to dismiss the claim for pecuniary damages.

Referring to several previous length-of-proceedings cases against Bulgaria, the Government maintained that the amount claimed by the applicant as compensation for non-pecuniary damage was overly elevated and without justification. In their view, the amount awarded by the Court under this head should be commensurate to the principles of justice.

45. The Court notes that the applicant's detention in 1995 is not related to the length of the proceedings; moreover, the applicant's complaints relating to this detention were declared inadmissible (see paragraph 6 above and *Zhbanov v. Bulgaria* (dec.), no. 45563/99, 13 December 2001). As regards the restriction on his freedom of movement, the applicant has not shown that he was refused authorisation to leave Bulgaria for the purpose of undertaking a lucrative activity. Also, the applicant was not prevented from exercising his profession during the pendency of the proceedings and there

is no indication that he intended to apply for Bulgarian citizenship. Finally, the Court notes that the applicant has not submitted evidence capable of leading to the conclusion that the attachment of his apartment has occasioned him pecuniary damage, stemming from, for example, a missed opportunity to dispose of the apartment. Consequently, no award is made in respect of pecuniary damage.

Concerning the claim for compensation for non-pecuniary damage, the Court accepts that the applicant has suffered distress and frustration relating to the length of the proceedings. Having regard to all the circumstances of the case, and deciding on an equitable basis, the Court awards the applicant EUR 3,500.

B. Costs and expenses

46. The applicant, who was not legally represented, did not claim costs and expenses.

C. Default interest

47. 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*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 3,500 (three thousand five hundred euros) in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;

3. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President