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

FIFTH SECTION

CASE OF BALABANOV v. BULGARIA

(Application no. 70843/01)

JUDGMENT

STRASBOURG

3 July 2008

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 Balabanov v. Bulgaria,

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Volodymyr Butkevych,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 10 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 70843/01) 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 Kostadin Stoyanov Balabanov ("the applicant"), on 23 April 2001.

2. The applicant was represented by Mr V. Stoyanov, a lawyer practising in Pazardzhik. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Kotzeva, of the Ministry of Justice.

3. On 5 January 2006 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint concerning the length of the criminal proceedings against the applicant. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the complaint at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1949 and lives in Peshtera.

5. On 11 January 1990 the Pleven district public prosecutor's office opened criminal proceedings against the applicant for theft, embezzlement and other offences allegedly committed in 1989 and the beginning of 1990. On an unspecified date the applicant was formally charged.

6. At a later date the case was transferred to the Sofia district public prosecutor's office.

7. Subsequently, the scope of the investigation was widened to include thefts and other offences allegedly committed by the applicant after January 1990.

8. On an unspecified date it was established that almost the entire case file, which had consisted of thirty-two volumes, had been lost. Efforts were made to reconstruct the case file as far as possible.

9. On 9 April 1999 the Sofia district public prosecutor's office terminated the investigation on unknown grounds.

10. That decision was quashed by the Sofia city public prosecutor's office on 8 July 1999.

11. The decision of 8 July 1999 also contained instructions to the investigator as to the necessary investigative steps.

12. Between 1999 and 2002 the investigator examined several witnesses and commissioned an expert opinion by an economist to establish the value of the chattels allegedly stolen or appropriated by the applicant.

13. On 11 April 2005 the Sofia district public prosecutor's office terminated the proceedings on the ground that the prosecution of most of the offences was time-barred and that it had not been established that the applicant had committed the remaining offences.

14. In connection to these and other proceedings, the applicant was in pre-trial detention or in prison between May 1991 and August 1993, between 25 November and 7 December 1993 and between May 1994 and an unspecified date in 2002, 2003 or 2004.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. A legislative amendment that entered into force in June 2003 introduced the possibility for an accused person to request that his case be brought for trial if the investigation had not been completed within a time-limit of one or two years, depending on the charges (Article 239a Code of Criminal Procedure, as in force until April 2006). That possibility applied with immediate effect in respect of investigations opened before June 2003. If the prosecution failed to introduce an indictment or terminate the proceedings, the trial court was under a duty to terminate the proceedings itself.

16. Under the State and Municipalities Responsibility for Damage Act of 1988 ("the SMRDA") individuals can in certain circumstances seek damages for unlawful acts of the authorities. The Act does not mention excessive length of proceedings as a ground for an action for damages. Nor is there any practice in the domestic courts of awarding damages for excessive length of proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

17. The applicant complained that the criminal proceedings against him were unreasonably lengthy in breach of Article 6 § 1 of the Convention and under Article 13 that he did not have effective remedies in this respect.

18. The relevant part of Article 6 § 1 of the Convention 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..."

Article 13 of the Convention provides as follows:

> "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."

A. Period to be taken into consideration

19. The period to be taken into consideration began only on 7 September 1992, when the Convention entered into force for Bulgaria. Nevertheless, in assessing the reasonableness of the time that elapsed after that date, account must be taken of the state of proceedings at that time. The proceedings ended on 11 April 2005. The period was thus twelve years, seven months and four days. During that time the criminal proceedings remained at the preliminary investigation stage.

B. Admissibility

20. The Government submitted that the applicant had failed to exhaust the available domestic remedies because he had not initiated an action for damages under the SMRDA. The applicant disagreed.

21. The Court finds that the question of exhaustion of domestic remedies partly relates to the merits of the applicant's complaint under Article 13 of the Convention. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits (see *Nalbantova v. Bulgaria*, no. 38106/02, § 27, 27 September 2007).

22. The Court further finds that the complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

C. Merits

1. Complaint under Article 6 § 1 of the Convention regarding the length of the criminal proceedings

23. 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).

24. The Court observes that in the present case the proceedings remained at the pre-trial stage for more than twelve and a half years. It is true that the case appears to have been complex as it concerned numerous offences allegedly committed by the applicant (see paragraphs 5 and 7 above). However, it is clear from the facts of the case that the conduct of the authorities, not the complexity of the case, led to the excessive length of the proceedings. In particular, delays resulted from the loss of the case file and the efforts to reconstruct it (see paragraph 8 above). Furthermore, the only investigative steps taken between 1999 and 2002 were the questioning of several witnesses and the commissioning of an expert report (see paragraph 12 above). The proceedings were only terminated three years later, in 2005 (see paragraph 13 above). These delays are clearly attributable to the authorities. There is, on the other hand, no indication that the applicant, who was in detention for most of the period under consideration (see paragraph 14 above), was responsible for any substantial delay.

25. The Court thus comes to the conclusion that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

2. Complaint under Article 13 in conjunction with Article 6 § 1 of the Convention

27. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). In the present case, having regard to its conclusion with regard to the excessive length of the proceedings (see paragraph 26 above), the Court considers that the applicant had an arguable claim of violation of Article 6 § 1.

28. Remedies available to a litigant 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 *Kudla,* cited above, § 158).

29. The Court must determine whether, in the particular circumstances of the present case, there existed in Bulgarian law effective remedies in respect of the length of the proceedings.

30. The Court notes that in June 2003 an amendment to the Bulgarian Code of Criminal Procedure, the new Article 239a, introduced the possibility for an accused person to have his case brought before the trial court if the investigation has not been completed within a certain time-limit (see paragraph 15 above). However, even assuming that after June 2003 the applicant could make use of the new remedy, any acceleration of the proceedings at that time would have come too late to make up for the excessive delay already accumulated.

31. As to the Government's preliminary objection that the applicant has failed to avail himself of an available domestic remedy under the SMRDA, the Court notes that a similar objection has been rejected in an earlier case (*Nalbantova v. Bulgaria*, cited above, § 35) because the SMRDA does not provide for damages in respect of length of proceedings (see paragraph 16 above). The Court sees no reason to reach a different conclusion in the present case.

32. The Court further notes that the Government have not referred to the existence of any other relevant remedy under Bulgarian law.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

36. The Government did not express an opinion.

37. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the protraction of the criminal proceedings against him for over twelve years. Having regard to its case-law in similar

cases and deciding on an equitable basis, the Court awards EUR 8,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

38. The applicant claimed EUR 30,000 for legal work by his lawyer before the domestic authorities and the Court. He also claimed 30 Bulgarian levs (BGN) for postage. He requested that any amount awarded by the Court under this head be transferred to the account of his legal representative, Mr V. Stoyanov. In support of his claims the applicant provided a time sheet of his representative and receipts for the postage.

39. The Government did not express an opinion.

40. According to the Court's case-law, an applicant is 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, and also noting that part of the applicant's complaints were declared inadmissible, the Court considers it reasonable to award the sum of EUR 600 covering costs under all heads. This amount is to be paid into the bank account of the applicant's representative, Mr V. Stoyanov.

C. Default interest

41. 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. *Decides* to join to the merits the question of the exhaustion of domestic remedies;

2. *Declares* admissible the complaints concerning the length of the criminal proceedings against the applicant and the alleged lack of any effective remedy in this respect;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant;

4. *Holds* that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, on account of the lack of an effective remedy for the excessive length of the criminal proceedings and accordingly *dismisses* the Government's preliminary objection based on non-exhaustion of domestic remedies;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with 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 8,000 (eight 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, to be paid in the bank account of the applicant's legal representative;

(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;

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

Done in English, and notified in writing on 3 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President