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

FIFTH SECTION

# CASE OF DINCHEV v. BULGARIA

*(Application no. 23057/03)*

JUDGMENT

STRASBOURG

22 January 2009

*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 Dinchev v. Bulgaria,**

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

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

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 16 December 2008,

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

# PROCEDURE

1. The case originated in an application (no. 23057/03) 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 Krum Iliev Dinchev ("the applicant"), on 16 July 2003.

2. The applicant, who had been granted legal aid, was represented by Mr M. Ekimdzhiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had been deprived of effective access to a court on account of the discontinuation, due to the lapse of the relevant limitation period, of the criminal proceedings against an individual who had caused him bodily harm.

4. On 6 March 2007 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint that as a result of the discontinuation of the criminal proceedings against the individual who had allegedly caused him bodily harm the applicant had been deprived of access to a court. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3 of the Convention).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Vidin.

6. At the relevant time he worked as an electrical engineer on a ship on the Danube river. At about 9 p.m. on 3 January 1992, while the ship was anchored in Passau, Germany, and the crew were celebrating a birthday onboard, one of them, Mr V.M., who had been drinking alcohol, showed the others a gas pistol he had bought. He put the muzzle close to the first mechanic's head and then went out of the cabin. A few seconds later a shot was heard and V.M. entered the cabin, saying that he had shot the second mechanic. The others admonished him not to play with the pistol, as he could blind somebody. However, V.M. turned towards the applicant and told him that he "[would] be next". The applicant warned him not to play with the pistol, but V.M. aimed at him, laughing. The applicant tried to hide his face and went out of the cabin and back in several times. V.M. continued to laugh and shot the applicant in the face, from a distance of about 50 or 60 centimetres. The applicant was blinded and felt numb in his nose, mouth and chin. His glasses were covered with powder.

7. On the next morning the applicant was taken to a hospital in Passau to undergo treatment. He had a number of black disfiguring scars on his face.

8. The applicant brought the matter to the attention of the Bulgarian prosecuting authorities on 2 June 1993. On 14 December 1993 the Vidin District Prosecutor's Office opened a criminal investigation into the incident and in December 1993 and January 1994 in the investigator in charge of the case interviewed several witnesses.

9. On 1 February 1994 V.M. was charged and questioned.

10. On 11 February 1994 the investigator concluded that V.M. had wilfully caused the applicant intermediate bodily harm, contrary to Article 129 § 1 of the 1968 Criminal Code (see paragraph 26 below), and recommended that he be committed for trial.

11. No further procedural steps were undertaken until 15 May 1998, when the Lom District Prosecutor's Office, to which the case had been transferred in February 1994, submitted an indictment against V.M. to the Lom District Court, accusing him of negligently inflicting intermediate bodily harm on the applicant, contrary to Article 133 of the 1968 Criminal Code (see paragraph 26 below).

12. In the meantime, in 1994, November 1995 and January 1996, the applicant contacted the Lom District Prosecutor's Office and requested that the case be processed faster. In 1996 and 1997 he also complained about the delay to the Montana Regional Prosecutor's Office.

13. The first hearing before the Lom District Court, listed for 3 November 1998, was adjourned because the witnesses and an expert witness did not appear.

14. The hearing took place on 23 February 1999. The court accepted for examination a civil-party claim which the applicant had lodged the previous day, and gave him leave to take part in the proceedings as a private prosecuting party alongside the public prosecutor. Noting that V.M. was ill, the court adjourned the case.

15. A hearing scheduled for 15 April 1999 failed to take place because V.M. was ill and none of the witnesses had appeared.

16. A hearing listed for 23 February 2000 was also adjourned because V.M. was absent. The court found that he was evading the proceedings and ordered his detention.

17. A hearing listed for 5 July 2000 started as planned, but was adjourned because it emerged that V.M. had not received a copy of the indictment.

18. The next hearing was held on 20 September 2000. The court once again accepted for examination the applicant's civil-party claim and gave him leave to take part in the proceedings as a private prosecuting party alongside the public prosecutor. The applicant's counsel complained that the proceedings were protracted and on this ground requested the recusal of the panel examining the case. The court turned down his request. It adjourned the case because most of the witnesses were absent.

19. The next hearing took place on 18 January 2001. The public prosecutor asked the court to discontinue the proceedings because the applicable limitation period had expired. The applicant objected, saying that the court should deal with this request only after hearing the witnesses and forming a more definite view on the proper legal characterisation of V.M.'s act, which was highly relevant for determining the applicable limitation period. The court decided to discontinue the proceedings, finding that the limitation period for prosecuting the offence allegedly committed by V.M. had expired. The offence had been allegedly perpetrated on 3 January 1992, the investigation had been instituted on 14 December 1993, V.M. had been charged on 1 February 1994, and no procedural steps had been taken until 15 May 1998, when he had been indicted. The charges against him were under Article 133 of the 1968 Criminal Code, which provided for up to one year's imprisonment or forced labour. By Article 80 § 1 (5) of the same Code, the prosecution of the alleged offence was barred following the expiration of two years after its commission (see paragraphs 27 and 28 below).

20. Upon the appeal of the applicant, in a decision of 14 June 2001 the Montana Regional Court quashed the discontinuation and remitted the case. It found, *inter alia*, that the lower court had correctly adopted the legal characterisation of the offence given in the indictment. However, that court

had, in breach of the rules of procedure, omitted to ask V.M. whether or not he wished to benefit from the expiration of the limitation period or preferred to be tried.

21. At a hearing held on 14 November 2001 the Lom District Court, having heard V.M.'s declaration that he wanted to avail himself of the expiration of the limitation period, again decided to discontinue the proceedings, giving the same reasons as earlier.

22. The applicant appealed, arguing, *inter alia*, that the court had erred by blindly accepting the legal characterisation of the offence given in the indictment instead of examining it independently. There were serious indications that V.M. had perpetrated his act wilfully and not negligently, as asserted in the indictment.

23. In a decision of 22 April 2002 the Montana Regional Court upheld the lower court's decision. It found that it had not erred by examining the case in line with the legal characterisation of the offence set out in the indictment and by ruling that the offence of which V.M. had stood accused could no longer be prosecuted. It was evident that the limitation period had lapsed even before the indictment had been submitted to the court. The lower court had omitted to spot this at the outset, but later had rightly discontinued the proceedings on that ground.

24. The applicant appealed on points of law, arguing that the legal characterisation of the alleged offence – and hence the applicable limitation period – had been incorrect, as there were indications that V.M. had perpetrated his act wilfully.

25. In a final judgment of 20 January 2003 the Supreme Court of Cassation upheld the lower court's decision. It found that at the time when V.M. had been indicted the absolute limitation period for prosecuting the offence – three years – had already expired. The court did not comment on the legal characterisation of the offence.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Bodily harm

26. Article 133 of the 1968 Criminal Code makes it an offence punishable by up to one year's imprisonment or, at the relevant time, forced labour, to negligently inflict grievous or intermediate bodily harm on another. The wilful inflicting of intermediate bodily harm is an offence punishable by up to five years' imprisonment (Article 129 § 1 of the Code). Both offences are publicly prosecutable (Article 161 of the Code).

### B. Limitation periods for the prosecution of criminal offences

27. By Article 80 § 1 of the 1968 Criminal Code, the prosecution of an offence is barred after a certain period of time. This period varies in relation to the penalty provided for the offence and ranges from twenty years for offences punishable by life imprisonment to two years for offences punishable by one year's imprisonment or less. The period starts to run from the completion of the offence (Article 80 § 3 of the Code) and is interrupted by every act effected by the competent authorities with a view to prosecuting the offender (Article 81 § 2 of the Code). Such interruptions notwithstanding, prosecution is no longer possible if the time elapsed since the perpetration of the offence is more than one and a half times the limitation period (Article 81 § 3 of the Code). Accordingly, the prosecution of an offence punishable by one year's imprisonment or less, such as negligent infliction of intermediate bodily harm, is absolutely barred after the expiration of three years (one and a half times two years) from its perpetration, whereas the prosecution of an offence punishable by up to five years' imprisonment, such as wilful infliction of intermediate bodily harm, is absolutely barred after the expiration of fifteen years (ten years plus one half) from its perpetration (Article 81 § 3 in conjunction with Article 80(3) and (5) of the Code).

28. Upon the expiration of the limitation period, the proceedings against the alleged offender must be discontinued (Article 21 § 1 (3) of the 1974 Code of Criminal Procedure, superseded by Article 24 § 1 (3) of the 2005 Code of Criminal Procedure). However, he or she may waive this benefit and prefer to be tried. In that case the proceedings have to continue (Article 21 § 2 of the 1974 Code, superseded by Article 24 § 2 of the 2005 Code).

### C. Tort claims in civil proceedings and in the context of criminal proceedings

29. The victim of a tort which is also a publicly prosecutable criminal offence has a choice of bringing an action against the alleged tortfeasor in the civil courts, with the result that the proceedings will be stayed in anticipation of the outcome of the pending or impending criminal investigation against the tortfeasor (Article 182 § 1 (d) of the 1952 Code of Civil Procedure, superseded by Article 229 § 1 (5) of the 2007 Code of Civil Procedure), or of making a civil-party claim in the context of the criminal proceedings instituted by the prosecuting authorities (Article 60 § 1 of the 1974 Code of Criminal Procedure, presently replaced by Article 84 § 1 of the 2005 Code of Criminal Procedure). Until June 2003 a civil-party claim could be made even during a preliminary investigation, before the case had been brought to trial (Article 60 § 1 of the 1974 Code, as in force

until June 2003). At present it can be made only after the case has already been brought to trial (Article 60 § 1 of the 1974 Code, as in force after June 2003, and Article 84 § 1 of the 2005 Code). The claim can be made in writing or orally (Article 61 §§ 1 and 2 of the 1974 Code and Article 85 §§ 1 and 2 of the 2005 Code). In a judgment of 28 October 2002 the Supreme Court of Cassation accepted that it could be made even by simply taking an active part in the preliminary investigation (реш. № 541 от 28 октомври 2002 г. по н.д. № 420/2002 г., ВКС, I н.о.).

30. Under Article 64 § 2 of the 1974 Code (superseded by Article 88 § 2 of the 2005 Code), the examination of the civil-party claim could not cause the criminal case to be adjourned. If the proceedings were discontinued, the claim was not examined, but could be brought separately in a civil court (Article 64 § 3 of the 1974 Code, as worded both before and after June 2003, presently superseded by Article 88 § 3 of the 2005 Code). The criminal court ruled on the claim only when giving judgment on the merits of the criminal case, even if in that judgment it ruled that the accused's criminal liability had been extinguished (Article 305 of the 1974 Code, superseded by Article 307 of the 2005 Code; and реш. № 225 от 20 септември 2004 г. по н.д. № 849/2003, ВКС, II н.о.).

### D. Limitation periods for tort claims

31. All tort claims are extinguished with the expiration of five years after the commission of the tort or the discovering of the tortfeasor (sections 110 and 114(3) of the 1951 Contracts and Obligations Act). However, by section 115(1)(g) of the Act, time ceases to run during the "pendency of the judicial proceedings relating to the [tort] claim". The application of this rule in relation to criminal proceedings has been unclear. Thus, in a judgment of 18 May 2000 the Supreme Court of Cassation construed it as meaning that time stops running not only during the pendency of a civil suit, but also during the pendency of criminal proceedings relating to the same facts, even at their preliminary investigation phase and in the absence of a civil-party claim (реш. № 456 от 18 май 2000 г. по н.д. № 435/1999 г., ВКС, I н.о.). However, in a judgment of 28 March 2005 it ruled that even the bringing of a civil-party claim in the context of a preliminary investigation does not stop the running of time, because these proceedings are not "judicial" (реш. № 2110 от 28 март 2005 г. по гр.д. № 3159/2002 г., ВКС, III г.о.). The issue was conclusively settled by the General Assembly of the Civil and the Commercial Chambers of the Supreme Court of Cassation, which held, in a binding interpretative decision of 5 April 2006, that time stops running under section 115(1)(g) of the Act only when the victim brings a claim for damages against the tortfeasor, whether in the context of criminal

proceedings or in separate civil proceedings (тълк. реш. № 5 от 5 април 2006 г. по тълк.д. № 5/2005 г., ОСГК и ОСТК на ВКС).

### E. Private prosecuting parties in criminal proceedings instituted by the prosecuting authorities

32. Persons who have suffered damage from a publicly prosecutable offence may take part in the criminal proceedings as private prosecuting parties alongside the public prosecutor (Article 52 of the of the 1974 Code of Criminal Procedure, superseded by Article 76 of the 2005 Code of Criminal Procedure). They may press charges even if those are dropped by the public prosecutor (Article 54 § 2 of the 1974 Code, superseded by Article 78 § 2 of the 2005 Code), but may not seek a legal characterisation of the offence that is different from the one given in the indictment drawn up by the public prosecutor (реш. № 713 от 6 декември 1999 г. по н.д. 541/1999 г., ВКС, II н.о.).

## THE LAW

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

33. The applicant complained that as a result of the discontinuation of the criminal proceedings against V.M. and the consequent non-examination of his civil-party claim he had been denied effective access to a court. He relied on Article 6 § 1 of the Convention, which provides, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

### A. Admissibility

34. The Government submitted that the applicant had failed to exhaust domestic remedies. They asserted that he could have brought a tort action in the civil courts, both before the institution and after the discontinuation of the criminal proceedings against V.M. He had been aware of this possibility, which was practical and effective, but had chosen not to avail himself of it.

35. The applicant replied that the objection was inapposite, because the issue was not whether or not he could seek compensation through other channels, but whether or not the courts' failure to rule on his claim had been justified.

36. The Court considers that the Government's objection is closely related to the substance of the complaint and should therefore be joined to the merits. The Court further considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

37. The Government submitted that if the courts had disposed of the criminal case by means of a judgment, they would have ruled on the applicant's civil-party claim as well. This would have been possible if V.M. had expressed the wish to be tried on the charges against him despite the expiration of the limitation period. However, the domestic courts' case-law showed that in cases where the proceedings were discontinued prior to judgment, they did not examine the civil-party claim; this state of affairs was fully lawful. After the discontinuation of the proceedings the applicant should have brought an action in the civil courts. He had not done so and had thus placed himself in the position of not being able to vindicate his right to damages. His claim would not have been declared time-barred, as under section 115(1)(g) of the 1951 Obligations and Contracts Act, as construed by the courts, time had stopped running during the pendency of the criminal proceedings against V.M.

38. The applicant submitted that, having lodged his claim, he could legitimately expect that it would be determined. However, this had not happened, essentially because the courts had seen themselves as bound by the way in which the public prosecutor had characterised V.M.'s offence. By characterising it more leniently than suggested by the investigator, and at the same time delaying, perhaps deliberately, bringing V.M. to trial, the public prosecutor had in fact predetermined the fate of the applicant's civil-party claim. Nevertheless, under Article 305 of the 1974 Code of Criminal Procedure, the courts could still have ruled on it despite their decision to discontinue the proceedings. Their failure to do so had prevented the applicant from claiming compensation from V.M., owing to the lapse of the civil limitation period. While under the Supreme Court of Cassation's earlier case-law the mere opening of criminal proceedings stopped the running of time, that position had later been reversed, with the result that he could not have successfully prosecuted a fresh civil action.

39. The Court notes at the outset that Article 6 § 1 does not guarantee the right to have third parties prosecuted or sentenced for a criminal offence (see, among many other authorities, *Perez v. France* [GC], no. 47287/99,

§ 70, ECHR 2004-I). It did not therefore apply to the criminal proceedings against V.M. as such. It follows that the applicant's inability to influence the legal characterisation of the offence allegedly committed by V.M. is of no moment.

40. The issue in the present case is rather whether the criminal courts' failure, due to the manner in which the proceedings unfolded as a whole, to examine the applicant's claim for damages deprived him of effective access to a court.

41. To answer this question, the Court must first determine whether Article 6 § 1 is applicable. On this point, it notes that the tort against the applicant was committed on 3 September 1992 (see paragraph 6 above), whereas he lodged his civil-party claim on 22 February 1999 (see paragraph 14 above), more than five years after that. Since under Bulgarian law the limitation period for tort claims is five years, it could be argued that at the time when he made his claim the applicant no longer had a "right" within the meaning of Article 6 § 1. However, the Court does not subscribe to that analysis, for three reasons. First, it appears that under national law as it stood when the applicant lodged his claim (see paragraph 31 above), the mere opening of criminal proceedings against the tortfeasor, V.M., had arguably stopped the running of the civil limitation period, with the result that the applicant's claim could be considered timely. The Supreme Court of Cassation's later interpretative decision to the contrary did not remove retrospectively the arguability of the applicant's claim (see, *mutatis mutandis*, *Yanakiev v. Bulgaria*, no. 40476/98, § 58 *in fine*, 10 August 2006, citing *Z and Others v. the United Kingdom* [GC], no. 29392/95, § 89, ECHR 2001-V). Second, the criminal courts twice accepted the claim for examination without expressing any qualms about its timeliness (see paragraphs 14 and 18 above). Third, when the courts eventually failed to examine it by reason of their decision to discontinue the criminal proceedings, they did not say that it had been extinguished. The Court therefore concludes that Article 6 § 1 is applicable.

42. Article 6 § 1 guarantees the right of access to a court. This right is not absolute, but may be subject to limitations, since it by its very nature calls for regulation by the State. In laying down such regulation, the States enjoy a certain margin of appreciation, but the final decision as to observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. A limitation will furthermore not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see, among many other authorities, *McElhinney v. Ireland* [GC], no. 31253/96, §§ 33 and 34, ECHR 2001-XI (extracts)).

43. In the instant case, in so far as the applicant challenged the manner in which the national courts established the facts and applied the domestic law, the Court observes that it is not its task to take the place of these courts and decide in their stead how domestic law should be interpreted and applied. Its role is confined to ascertaining whether the effects of its application are compatible with the Convention (see *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, § 33, *Reports of Judgments and Decisions* 1998-I). In particular, the Court is not persuaded that it was arbitrary for the national courts to base their rulings about the applicable criminal limitation period on the legal characterisation of the offence given in the indictment drawn up by the public prosecutor. Likewise, the Court cannot subscribe to the applicant's assertion that these courts were under an obligation to examine his claim despite their decision to discontinue the criminal proceedings. Under the express terms of Article 64 § 3 of the 1974 Code of Criminal Procedure, in its versions both before and after June 2003, if the criminal proceedings were discontinued, this claim was not examined, but could be brought separately in a civil court. By Article 305 of the same Code, as construed by the Supreme Court of Cassation, the courts had to rule on the civil-party claim only if giving judgment on the merits of the criminal case (see paragraph 30 above), which was not the case here.

44. The Court further observes that the discontinuation of the criminal proceedings against V.M. in January 2003 did not formally bar the applicant from issuing a fresh action against him in a civil court. Moreover, seeing that before the Supreme Court of Cassation's interpretative decision of 5 April 2006 it was possible to argue that the limitation period for bringing a tort claim did not run during the pendency of the criminal proceedings relating to the tort (see paragraph 31 above), such an action was not necessarily destined to fail.

45. The Court must nevertheless determine whether, in spite of the fact that the applicant could have brought such an action, the situation of which he complains infringed his right of access to a court.

46. It starts with the observation that the Convention is intended to guarantee not rights that are theoretical or illusory, but rights that are practical and effective (see *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II). In cases where civil-party claims made in the context of criminal proceedings have not been examined by reason of the termination of the proceedings, the Court has had regard to the availability of other channels through which the applicants could vindicate their rights. In cases where the applicants had at their disposal accessible and effective avenues of redress, it found that their right of access to a court had not been infringed (see *Ernst and Others v. Belgium*, no. 33400/96, §§ 53-55, 15 July 2003; and *Forum Maritime S.A. v. Romania*, nos. 63610/00 and 38692/05, §§ 91-93, 4 October 2007).

47. The Court has also held that the fact that proceedings are taking a long time does not concern access to a court (see *Matos e Silva, Lda., and Others v. Portugal*, 16 September 1996, § 64, *Reports* 1996-IV; and, more recently, *Buonfardieci v. Italy* (dec.), no. 39933/03, § 20, 18 December 2007).

48. However, in other cases the Court has found violations of Article 6 § 1 when the discontinuation of criminal proceedings and the resultant non-examination of civil-party claims lodged in their context were due to omissions by the authorities; in particular, excessive delays leading to the lapse of the limitation periods for criminal prosecution (see *Anagnostopoulos v. Greece*, no. 54589/00, §§ 31 and 32, 3 April 2003; and *Gousis v. Greece*, no. 8863/03, §§ 34 and 35, 29 March 2007).

49. In the Court's view, the present case must be distinguished from *Matos e Silva, Lda.* and *Buonfardieci* (cited above), where the applicants' claims were pending before the domestic courts and it was not open to doubt that they would be examined. Here, the applicant's civil-party claim was not examined because of the discontinuation of the proceedings owing to the expiration of the limitation period for criminal prosecution. The applicant had availed himself of the possibility of making such a claim and the courts had twice accepted it for consideration. He could therefore legitimately expect them to rule on it. Their failure to do so was entirely due to the slow manner in which the authorities had processed the criminal case against V.M.

50. As in *Anagnostopoulos*, the Court considers that where the domestic legal order provides litigants with an avenue of redress, such as a civil claim in the context of criminal proceedings, the State is under an obligation to ensure that they enjoy the fundamental guarantees laid down in Article 6 § 1. In the Court's view, the applicant could not be expected to wait for the extinction of the criminal liability of the alleged perpetrator of the offence of which he was victim, many years after making his original civil-party claim and even more time after the impugned events, to bring a fresh action before the civil courts (see *Anagnostopoulos*, cited above, § 32). Such an action would have been, firstly, extremely difficult to prosecute in consideration of the need to gather all the evidence anew and, secondly, unlikely to end favourably for the applicant in view of the intervening legal developments.

51. This conclusion is not altered by the fact the applicant could have opted for a separate civil action from the outset. His preference for claiming damages in the context of criminal proceedings was not unjustified in the particular circumstances. Once he had opted for this remedy, he was entitled to have his claim determined and not required to try, for the purposes of Article 35 § 1 of the Convention, the other avenue of redress available under Bulgarian law (see *Krumpel and Krumpelová v. Slovakia*, no. 56195/00, §§ 39-48, 5 July 2005).

52. In view of the foregoing, the Court concludes that the applicant did not enjoy effective access to a court for the examination of his civil-party claim, and that this could not be cured by the possibility of bringing a fresh action in the civil courts. It therefore rejects the Government's objection and holds that there has been a violation of Article 6 § 1 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage. He submitted that his civil-party claim, which had not been examined by the national courts, had been evidently well-founded. Moreover, as a result of the legal developments in Bulgaria he had had very slim chances of successfully prosecuting a fresh civil action against V.M., which prevented him from securing an award of damages for the serious damage to his health. Also, he had not raised complaints about the length of the proceedings and about the lack of effective remedies in this regard solely because he had not been able to afford legal advice from the outset of the Strasbourg proceedings. Finally, it transpired from the facts of the case that the prosecuting authorities had deliberately delayed committing V.M. for trial.

55. The Government did not comment on the applicant's claims.

56. The Court considers that the applicant must have endured frustration on account of the national courts' failure to examine his civil-party claim, which put him in a situation in which he was unlikely to obtain any compensation for the serious damage to his health. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards him, in respect of non-pecuniary damage, EUR 3,000. To that amount should be added any tax that may be chargeable.

### B. Costs and expenses

57. The applicant sought the reimbursement of EUR 1,825.80 incurred in lawyers' fees and expenses for the proceedings before the Court. He also claimed EUR 26 for costs (telephone, postage, office materials and

copying). He requested that any amount awarded under this head be paid into the bank account of his lawyer.

58. The Government did not comment on the applicant's claims.

59. According to the Court's case-law, applicants are entitled to the reimbursement of their 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, having regard to the information in its possession and the above criteria, and noting that the applicant has been paid EUR 850 in legal aid, the Court considers it reasonable to award the sum of EUR 800, plus any tax that may be chargeable to him. This sum is to be paid into the bank account of the applicant's legal representative, Mr M. Ekimdzhiev.

### C. Default interest

60. 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

1. *Decides* unanimously to join the Government's objection to the merits;

2. *Declares* unanimously the remainder of the application admissible;

3. *Dismisses* unanimously the Government's objection and *holds* by five votes to two that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* by five votes to two
   (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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 800 (eight hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representative, Mr M. Ekimdzhiev;
   (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;

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

Done in English, and notified in writing on 22 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Stephen Phillips | Peer Lorenzen |
| Deputy Registrar | President |

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the dissenting opinion of judges Lorenzen and Jaeger and is annexed to this judgment.

P.L.
J.S.P.

# DISSENTING OPINION OF JUDGES LORENZEN AND JAEGER

In the present case the majority found a violation of Article 6 § 1 of the Convention because the applicant did not enjoy effective access to a court for the examination of his civil-party claim. For the following reasons we disagree with this conclusion.

Even if the Convention under the Court's constant case-law grants a right to have a civil claim determined by a court ("access to court") it does not grant a right to have it heard in any particular form, this being left to the national legislation to determine. There is thus no absolute right to have a civil claim for tort based on alleged criminal behaviour determined in criminal proceedings against the person who has caused the damage. However, where in accordance with domestic law a civil claim has been lodged in criminal proceedings, a violation of the right of access to court has been found if the proceedings have been conducted in a protracted way leading to the non-examination of the claim because the criminal prosecution has become time-barred (see, for example, the *Anagnostopoulos* judgment referred to in paragraph 48 of the judgment).

We can agree with the majority that the criminal prosecution in the present case was conducted in a "slow manner" (paragraph 49 of the judgment), in particular at the investigation stage. But the applicant himself contributed considerably to the lapse of time by bringing his allegations to the attention of the prosecuting authorities not earlier than one year and five months after the events (paragraph 8 of the judgment), when he could only expect to succeed later on with a civil claim in case investigation and court proceedings would be terminated by a final judgment very speedily within the next one year and seven months. This was not the case.

The applicant was able to present his claim only during the first court hearing on 23 February 1999 after the indictment had been submitted on 15 May 1998 more than six years after the incident. However, the Convention does not grant a right to have criminal proceedings instituted, and accordingly Article 6 § 1 was not applicable in the present case until the claim effectively had been lodged. At that time the prosecution was time-barred as the three years period had expired already in January 1995, (see paragraph 25 of the judgment). When lodging his claim the applicant, who was represented by counsel, must – or at least should – have been aware of this and that it was unlikely that the claim would be examined unless the charge was legally qualified as a more serious offence under the Criminal Code. This question is primarily for national courts to determine and as the majority has rightly stated there are no grounds for finding that they arbitrarily refused to qualify the charge in a different way.

In these circumstances we fail to see that the applicant, who before as well as after the termination of the criminal prosecution, could have lodged

his claim against V.M. in civil proceedings, has been denied access to court in breach of Article 6 § 1 of the Convention.