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

FIRST SECTION

CASE OF DJANGOZOV v. BULGARIA

(Application no. 45950/99)

JUDGMENT

STRASBOURG

8 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 Djangozov v. Bulgaria,

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

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

Having deliberated in private on 17 June 2004,

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

PROCEDURE

1. The case originated in an application (no. 45950/99) 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 Petar Ivanov Djangozov, a Bulgarian national who was born in 1946 and lives in Plovdiv ("the applicant"), on 3 September 1998.

2. The applicant was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Ms G. Samaras and Ms M. Kotzeva, of the Ministry of Justice.

3. The applicant alleged that the civil proceedings brought by him against a newspaper had lasted unreasonably long, that the excessive length of the proceedings had prevented him from effectively protecting his reputation and that he had not had an effective remedy against the excessive length of the proceedings.

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 Fourth 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.

6. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

7. By a decision of 15 May 2003 the Court (First Section) declared the application admissible.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1946 and lives in Plovdiv.

10. On 9 December 1994 a newspaper in the town of Parvomay, "Parvomay dnes", published an article on the problems of the liquidation of State cooperative farms and the restitution of the agricultural land in the region. The article contained offensive allegations against the applicant who was a former chairman of the local commission in charge of the liquidation of the cooperative farms. The title of the article, quoting the applicant, read "Do not hassle me, I have a yellow card" („Не ме закачайте, аз съм с жълта карта"). The latter expression means that the person in question is registered as mentally ill. The article's author commented on the poor results of the commission's audit, stating that they could be expected since its chairman was a "person of unsound mind" („невменяем човек"). The applicant was also referred to as a "wretch" („нещастник").

11. In February 1995 the applicant lodged with the Parvomay District Prosecutor's Office a request for the opening of proceedings for criminal libel against the newspaper's editor. On 6 March 1995 the competent prosecutor opened a preliminary inquiry with a view to the opening of criminal proceedings against the editor.

12. On 2 March 1995 the applicant filed a civil action against the newspaper's editor and publisher, alleging that the article had defamed him. He claimed non-pecuniary damages for injury to his reputation.

13. The Parvomay District Court held its first hearing in the case on 13 April 1995. Counsel for the defendants requested the court to stay the proceedings, presenting a certificate from the Prosecutor's Office to the effect that a preliminary inquiry had been opened. The court stayed the proceedings in accordance with Article 182 § 1 (d) of the Code of Civil Procedure ("CCP"), pending the outcome of the preliminary inquiry.

14. The applicant lodged an interlocutory appeal, arguing, *inter alia*, that the pending preliminary inquiry could not serve as grounds for the staying of the civil proceedings, the only such grounds being pending criminal proceedings.

15. On 13 July 1995 the Plovdiv Regional Court upheld the lower court's ruling, holding that the facts alleged in the civil action constituted

"criminal elements" within the meaning of Article 182 § 1 (d) of the CCP. The only bodies competent to decide whether a criminal offence had or had not been committed were the prosecutor and the criminal courts. The eventual ruling of the criminal court would be *res judicata* for the civil court, as provided by Article 222 of the CCP. Therefore, the proceedings had been properly stayed.

16. On 5 September 1995 the Parvomay District Prosecutor's Office opened criminal proceedings against the journalist who had written the article against the applicant.

17. While the civil proceedings were stayed the Parvomay District Court sent numerous letters to the District Prosecutor's Office and to the District Investigation Service, inquiring about the status of the criminal proceedings. Such letters were sent on 22 April, 9 September and 15 November 1996, 4 February and 5 and 11 December 1997, 12 May, 15 July and 18 December 1998, 12 April 1999, 25 January and 13 September 2000, and 28 February 2001.

18. Meanwhile, on 23 March 1998 the applicant's lawyer requested the Parvomay District Prosecutor's Office to do the necessary for the speedy conclusion of the criminal proceedings. On 4 May 1998 he filed a complaint with the Plovdiv Regional Prosecutor's Office, alleging that the criminal proceedings had lasted unreasonably long, thus precluding the resumption of the civil proceedings. In a letter of 12 May 1998 the Parvomay District Prosecutor's Office informed the applicant that the investigation would be completed within thirty days. On 21 May 1998 the Plovdiv Regional Prosecutor's Office instructed the Parvomay District Prosecutor's Office to finalise the investigation within fourteen days.

19. On 1 July 1998 the Parvomay District Prosecutor's Office replaced the investigator in charge of the case, noting that he had failed to perform the necessary investigative steps in time.

20. On 7 November 2000 the Parvomay District Prosecutor's Office discontinued the criminal proceedings because the relevant limitation period had expired. The Parvomay District Court affirmed the discontinuation in a decision of 22 November 2000.

21. On 1 March 2001 the Parvomay District Prosecutor's Office sent the case file to the Parvomay District Court, which thereupon resumed the stayed civil proceedings.

22. A hearing listed for 3 May 2001 was adjourned because the defendants had not been properly summoned.

23. The next hearing was scheduled for 5 July 2001. The court noted that the defendants had again not been properly summoned and adjourned the case. As the summons sent to one of the defendants, the cooperative which had published the newspaper containing the allegedly defamatory article, was returned with a note that that cooperative had apparently been liquidated two years before that, the court instructed the applicant to

produce a certificate of the cooperative's current status. [*Note*: Certificates of current status are issued by the register of companies kept at the regional courts.]

24. On 21 August 2001 the Parvomay District Court discontinued the proceedings, holding that the applicant had failed to comply with its instructions. The applicant appealed and on 8 January 2002 the Plovdiv Regional Court quashed the discontinuation and remitted the case to the Parvomay District Court.

25. On 21 January 2002 the Parvomay District Court again requested the applicant to provide a certificate of current status of the defendant cooperative.

26. In a judgment of 29 April 2003 the Parvomay District Court allowed the applicant's claim against the newspaper editor, but dismissed his claim against the cooperative.

27. The applicant appealed against the judgment to the Plovdiv Regional Court.

28. At the time of the latest information from the parties (July 2003) the proceedings were still pending before the Plovdiv Regional Court, which had not yet set the appeal down for hearing.

II. RELEVANT DOMESTIC LAW AND PRACTICE

29. The CCP provides, in Articles 182 § 1 (d) and 183, that a court examining a civil action:

> "182. ... shall stay the proceedings:
>
> ...
>
> (d) whenever criminal elements, the determination of which is decisive for the outcome of the civil dispute, are discovered in the course of the civil proceedings...
>
> 183. Proceedings which have been stayed shall be resumed *ex officio* or upon a party's request after the respective obstacles have been removed..."

Article 222 of the CCP provides:

> "The findings contained in a final judgment of a criminal court and concerning the issue whether the act in question has been committed, its unlawfulness and the perpetrator's guilt are binding on the civil court when it examines the civil consequences of the criminal act."

In a judgment of 18 January 1980 (реш. № 3421 от 18 януари 1980 г. по гр.д. № 1366/1979 г., I г.о.) the First Civil Division of the Supreme Court held:

> "In principle the fact of a crime may only be established under the procedures of the Code of Criminal Procedure. That is why, when an alleged civil right derives from a fact which constitutes a crime under the Criminal Code, the civil court, according to

Article 182 § 1 (d) of the [CCP], is obliged to stay the civil proceedings. This is necessary in order to respect the decision of the criminal court. It is mandatory for the civil courts regardless of the crime in issue. The mandatory binding force of the decisions of the criminal courts is set out in Article 222 of the [CCP]."

30. The new Article 217a of the CCP, adopted in July 1999, provides:

"1. Each party may lodge a complaint about delays at every stage of the case, including after oral argument, when the examination of the case, the delivery of judgment or the transmitting of an appeal against a judgment is unduly delayed.

2. The complaint about delays shall be lodged directly with the higher court, no copies shall be served on the other party, and no State fee shall be due. The lodging of a complaint about delays shall not be limited by time.

3. The chairperson of the court with which the complaint has been lodged shall request the case file and shall immediately examine the complaint in private. His instructions as to the acts to be performed by the court shall be mandatory. His order shall not be subject to appeal and shall be sent immediately together with the case file to the court against which the complaint has been filed.

4. In case he determines that there has been [undue delay], the chairperson of the higher court may make a proposal to the disciplinary panel of the Supreme Judicial Council for the taking of disciplinary action."

THE LAW

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

31. The applicant alleged that the length of the civil proceedings he had commenced against the newspaper had been unreasonable, in breach of Article 6 § 1 of the Convention.

Article 6 § 1 provides, as relevant:

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

32. The applicant submitted that the Parvomay District Court had erroneously stayed the civil proceedings, as no "criminal elements" had been found to exist at the time of the staying. He also stated that the preliminary inquiry opened by the Parvomay District Prosecutor's Office had dragged on for an unreasonable amount of time. As to the ensuing criminal proceedings, the only acts carried out by the investigation and the prosecution authorities had been their opening and subsequent discontinuation, within a timeframe of almost six years, despite the numerous letters sent by the civil court and the complaints made by the applicant. Moreover, the authorities had continued to hold up the civil

proceedings even after the discontinuation of the concurrent criminal ones. Given that during the pendency of the case one of the defendants had ceased to exist, the applicant had been indeed prevented from vindicating his reputation by obtaining damages for the alleged libel.

33. Having conceded that the complaint was admissible, the Government did not comment on its merits.

A. Period to be taken into consideration

34. The Court notes that the civil proceedings commenced on 2 March 1995 (see paragraph 12 above). In July 2003, date of the latest information from the parties, they were pending before the second-instance court (see paragraph 28 above). The proceedings have therefore lasted at least eight years and four months for two levels of court.

B. Reasonableness of the length of the proceedings

35. 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 in the litigation has also to be taken into account (see, among many other authorities, *Süßmann v. Germany*, judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, pp. 1172-73, § 48 and *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

36. As regards the complexity of the case, noting that the proceedings concerned an alleged libel committed against the applicant, the Court does not consider that the case presented any exceptional legal or factual difficulties.

37. Concerning the applicant's conduct, the Court does not find that he has significantly contributed to the overall length of the proceedings.

38. As to the conduct of the competent authorities, the Court notes that the civil proceedings were stayed on 13 April 1995, approximately six weeks after their institution (see paragraph 13 above). It is not the Court's task to determine whether there existed "criminal elements, the determination of which [was] decisive for the outcome of the civil dispute" and whether the proceedings were thus properly stayed, because as a general rule it is for the domestic courts to establish the facts and interpret and apply national law. Nor can the Court find that a system providing for the dependence of civil proceedings on criminal ones, when they concern the same facts, goes *per se* against the requirements of Article 6. However, the Court notes that after the civil proceedings were stayed, no activity took place in the concurrent criminal proceedings for more than five years (see

paragraphs 16-20 above). This delay, which appears unjustified, in turn led to a delay in the civil proceedings. A further postponement of approximately four months was due to the fact that after the discontinuation of the criminal proceedings in November 2000 the case file was forwarded to the civil court only in March 2001 (see paragraphs 20 and 21 above).

39. Moreover, even after the resumption of the civil proceedings in March 2001 additional delays continued to accumulate. In particular, the Court notes that two hearings were adjourned because the defendants had not been properly summoned (see paragraphs 22 and 23 above).

40. Finally, the Court notes that in July 2003, more than eight years after their institution, the proceedings were still pending before the second-instance court (see paragraph 28 above).

41. In the light of the criteria laid down in its case-law and having regard to the overall duration of the proceedings and the delays attributable to the authorities, the Court considers that the length of the proceedings complained of failed to satisfy the reasonable time requirement.

There has, accordingly, been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. The applicant alleged that the excessive length of the proceedings had also resulted in a breach of Article 8 of the Convention, which provides, as relevant:

> "1. Everyone has the right to respect for his private ... life ..."

43. Having regard to its finding in relation to Article 6 § 1 (see paragraph 41 above), the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 8 (see *Laino v. Italy* [GC], no. 33158/96, § 25, ECHR 1999-I).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

44. The applicant also maintained, relying on Article 13 of the Convention, that he had had no effective remedy in respect of the length of the proceedings. Article 13 reads 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."

45. The applicant submitted that at the relevant time in Bulgarian law there existed no remedies against unreasonably lengthy civil proceedings. Only in 1999 had the legislature adopted an amendment to the CCP, creating the "complaint about delays". However, by that time the proceedings at issue had already lasted more than five years. Therefore, that

new remedy could not have retroactively expedited them. Moreover, as the civil proceedings had been stayed to await the outcome of the concurrent criminal proceedings, the lodging of a "complaint about delays" would have been futile.

46. The Government did not comment on this complaint.

47. 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.

48. The scope of the Contracting States' obligations under Article 13 varies depending on the nature of the applicant's complaint. However, the remedy required by Article 13 must be "effective" in practice as well as in law (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

49. 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 *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 litigant with adequate redress for delays that have already occurred (see *Mifsud v. France* (dec.)[GC], no. 57220/00, ECHR 2002-VIII).

50. Having regard to its conclusion in respect of the applicant's complaint under Article 6 § 1 (see paragraph 41 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.

51. The Court first notes that the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for the delays that had already occurred. It also notes that the only apparent remedy against the excessive length of civil proceedings in Bulgaria is the "complaint about delays" introduced with the adoption of the new Article 217a of the CCP in July 1999. This procedure allows a litigant to apply to the chairperson of the higher court when the examination of the case, the delivery of judgment or the transmitting of an appeal against judgment is unduly delayed. The chairperson has the power to issue binding instructions to the court examining the case (see paragraph 30 above).

52. However, having regard to the particular circumstances of the present case, the Court does not consider it necessary to rule in the abstract

whether the "complaint about delays" is an effective remedy for the purposes of Article 13 of the Convention. Even if it is accepted that after its introduction in July 1999 the applicant could have effectively fought against the further delays by filing such complaints, that could not have made up for the delay already accumulated during the period 1995-99. In this connection, the Court notes that the effectiveness of a remedy may depend on whether it has a significant effect on the length of the proceedings as a whole (see *Holzinger v. Austria (No. 1)*, no. 23459/94, § 22, ECHR 2001-I, *Holzinger v. Austria (No. 2)*, no. 28898/95, § 21, 30 January 2001 and *Rajak v. Croatia*, no. 49706/99, §§ 33-35, 28 June 2001).

53. Moreover, regardless of whether a "complaint about delays" may provide a remedy for delays which are directly attributable to the civil court examining a case, it is doubtful whether the applicant could have successfully used this procedure while the civil proceedings were stayed to await the outcome of the concurrent criminal proceedings, because the criminal proceedings, while pending, constituted an "obstacle", within the meaning of Article 183 of the CCP, to the resumption of the civil ones (see paragraph 29 above). It thus seems that until November 2000, when the criminal investigation was discontinued and the civil proceedings resumed, the "complaint about delays" could not have provided a remedy to the applicant.

54. The Court concludes, therefore, that in the particular circumstances of the present case a "complaint about delays" cannot be considered an effective remedy irrespective of its possible effectiveness in principle.

55. Since the bulk of the delay in the present case occurred because of the decision of the civil court to stay the proceedings during the pendency of the concurrent criminal proceedings and the lack of any activity in these criminal proceedings (see paragraph 38 above), the Court must also examine whether there existed any means whereby the applicant could have obtained the speeding up of the criminal proceedings.

56. In this connection, the Court notes that in an effort to expedite the criminal proceedings the applicant complained about the delay to the Parvomay District Prosecutor's Office and the Plovdiv Regional Prosecutor's Office (see paragraph 18 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 litigants 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)).

57. In sum, the Court finds that in the particular circumstances of the present case the applicant did not have at his disposal any domestic remedies whereby he could have expedited the examination of his civil action.

58. 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.

59. 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

60. 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

61. The applicant claimed 10,000 euros ("EUR") in compensation for non-pecuniary damage. He made detailed submissions in respect of each violation of the Convention, emphasising the gravity of the case and referring to some of the Court's judgments.

62. Referring to some of the Court's judgments in previous length-of-proceedings cases against Bulgaria, the Government submitted that the claim was exaggerated and excessive. They were of the view that the amount of the compensation should be commensurate to the living standards in Bulgaria.

63. The Court considers that it is reasonable to assume that the applicant has suffered some 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 applicant the sum of EUR 2,800.

B. Costs and expenses

64. The applicant claimed EUR 1,870 for 6 hours of legal work on the domestic proceedings, at the hourly rates of EUR 30 and EUR 50, and 32 hours of legal work on the Strasbourg proceedings, at the hourly rate of

EUR 50. He claimed an additional EUR 274 for translation costs (34 pages), copying, mailing and overhead expenses. The applicant submitted a fees' agreement between him and his lawyer, a time-sheet and postal receipts.

65. The Government stated that: (i) the hourly rate of EUR 50 was excessive, regard being had to the usual lawyers' fees in Bulgaria; (ii) the legal work on the domestic proceedings had nothing to do with the subject-matter of the case before the Court; moreover, no documents had been submitted to prove that the applicant had indeed paid any fees for this work; and (iii) the claim for translation and other expenses, with the exception of postage, was not supported by documents.

66. The Court considers that the expenses incurred by the applicant in an effort to expedite the domestic proceedings, which were unjustifiably lengthy, were necessary and relevant to the complaints under the Convention. Further, the Court notes that the applicant has submitted a fees agreement and his lawyer's time-sheet concerning work done on his case. However, the Court notes that the claim for translation expenses is not supported by relevant documents. Having regard to all relevant factors, the Court awards EUR 1,600 in respect of costs and expenses.

C. Default interest

67. 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 it is unnecessary to rule on the complaint under Article 8 of the Convention;

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

4. *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, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 2,800 (two thousand eight hundred euros) in respect of non-pecuniary damage;

(ii) EUR 1,600 (one thousand six hundred euros) in respect of costs and expenses;

(iii) 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 July 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President