CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF DOINOV v. BULGARIA

(Application no. 68356/01)

JUDGMENT

STRASBOURG

27 September 2007

FINAL

27/12/2007

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 Doinov v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 4 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 68356/01) 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 Ognian Nakov Doinov ("the applicant") who was born in 1935 and lived in Vienna, on 29 December 1999. He passed away on 13 February 2000. In a letter of 26 March 2001 his wife, Mrs Elena Petkova Doinova, and his son, Mr Rosen Ognianov Doinov (the "heirs"), informed the Court that they wished to continue the present application.

2. The applicant and his heirs were represented by Mrs Y. Vandova, a lawyer practising in Sofia.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

4. On 3 November 2005 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the length of the criminal proceedings to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. The applicant was formerly a member of the Bulgarian Communist Party ("BCP"), in which he held the position of Secretary of the Central Committee of the BCP (1976-1986) and was a Member of the Politburo of the Central Committee of the BCP (1977-1988). He was also a Member of the National Assembly (1974-1990), the Minister for Industry and a Member of the Council of Ministers (1984-1986) and the Bulgarian Ambassador to Norway (1989-1990).

6. The applicant contended that following the democratic changes of 1989 the authorities started to systematically intimidate and harass both him and his family. In particular, despite continuing to have immunity as a Member of the National Assembly, his family residence had been searched, an inventory of all their possessions had been made and several restrictions had been placed on their real property. Fearing further intimidation, reprisals and possible unjustified prosecution by the authorities the applicant left the country on 14 April 1990. Thereafter he resided in Vienna, Austria.

B. The criminal proceedings

7. Preliminary investigation No. 3/92 was opened on 9 July 1992 by the Chief Prosecutor's Office against all the members of the Bureau of the Council of Ministers and the Secretariat of the Central Committee of the BCP for the period between 1981 and 1989. A total of twenty-two persons were charged, on an unspecified date, that during the said period they had participated in the adoption of decisions to provide financial assistance or extend loans, totalling 243,537,000 old Bulgarian levs (BGL), to (a) foreign countries, in respect of the Government, and (b) foreign political parties, in respect of the BCP. The decisions in question had been adopted by the Bureau of the Council of Ministers, the Secretariat or the Politburo of the Central Committee of the BCP. These persons, including the applicant, were charged under Article 203, in conjunction with Articles 201, 202 and 282, of the Criminal Code for having misappropriated, in concert, the aforementioned funds. It was contented that, in breach of their official duties, they had facilitated the misappropriation with the aim of obtaining an advantage for a third party, thereby causing considerable economic

damage to the country's economy. In view of the very large sums involved, the offence was qualified as being very serious.

8. In respect of the applicant, the initial charges against him were also under the above quoted provisions of the Criminal Code. It was contended that between 1981 and 1986 in his capacity of an official, Political Secretary of the BCP, and in concert with another ten officials, members of the Secretariat of the Central Committee of the BCP, he had misappropriated public funds and property (BGL 8,171,347; 200,000 convertible Bulgarian levs; 2,175,500 United States dollars; 8,000 tonnes of wheat; the value of organising a summit; sixty airplane tickets; 20,000 tonnes of oil; properties given to Ethiopia; training of fifty officials from Mozambique, thirty officers and thirty cadets from Ghana; and, training, accommodation and employment for thirty Turkish nationals), which had been entrusted to him for safekeeping and management and which represented a very serious offence and for a very large amount. In addition, it was claimed that in order to facilitate the aforesaid offence the applicant had perpetrated another offence – that in his capacity as an official, Secretary of the Central Committee of the BCP, he had violated his obligations as such and had exceeded his authority with the aim of obtaining advantage for himself and for a third party and had caused severe damages, which was qualified as being a very serious offence.

9. The criminal proceedings continued in the absence of the applicant due to the fact that he was residing in Austria at the time. On an unspecified date, he retained a lawyer to represent him before the investigating authorities.

10. On 23 July 1992 the Chief Prosecutor's Office ordered that the applicant be detained on remand, but the order was not enforced due his absence from the country. On an unspecified date the applicant was placed on the list of persons being sought by the police.

11. In a decision of 7 January 1993 the charges against the applicant were amended and the order for his detention was maintained.

12. On 1 October 1993 the Chief Prosecutor's Office sent a letter to the Chief Prosecutor's Office of Austria requesting it to detain and extradite the applicant to Bulgaria. The applicant was detained by the Austrian authorities on 9 December 1993.

13. On 8 December 1993 the applicant requested political asylum in Austria.

14. He was released by the Austrian authorities on 15 December 1993.

15. On 6 January 1994 the Chief Prosecutor's Office sent an official request to the Republic of Austria seeking the applicant's extradition to Bulgaria.

16. In a decision of 5 May 1994 the Vienna Court of Appeal refused the extradition request. It found that the actions of the applicant were in conformity with the Bulgarian Constitution and the laws at the time in

question and that the payments from the State budget to third countries and organisations were approved by decisions of the Council of Ministers and acts on the State budget. Moreover, the applicant's actions were deemed not to contravene the principles of international law and human rights. In addition, the Vienna Court of Appeal found that the applicant had been acting in conformity with his rights and obligations as an official who could decide on the allocation of State funds, which he did not undertake on his own, but as a member of a collective body, for which he was not individually culpable.

17. The criminal proceedings against the applicant continued. He contended that no further investigative procedures were conducted thereafter and that on at least four occasions the criminal proceedings had been stayed for undetermined periods of time. The last such occasion had been on 28 May 1995 when the Chief Prosecutor's Office stayed the proceedings because two of the defendants had become members of the National Assembly and had obtained immunity from prosecution.

18. On 3 June 1999 the applicant's lawyer filed a request with the Chief Prosecutor's Office demanding that the criminal proceedings be terminated. She referred to the findings of the Court in the case of *Lukanov v. Bulgaria* (judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 529-547) which had examined the same criminal proceedings and had found them to be deficient because the actions of the defendant had not constituted an offence under domestic legislation. In addition, the applicant's lawyer referred to the Government's undertaking before the Council of Europe to avoid similar such violations in the future (Resolution DH (98) 203 adopted by the Committee of Ministers on 10 July 1998 at the 637th meeting of the Ministers' Deputies).

19. On 15 June 1999 the criminal proceedings against the applicant were reopened by the Supreme Cassation Prosecutor's Office and the case was remitted for further investigation to the Specialised Investigation Division.

20. On 24 August 1999 the applicant's lawyer filed a second request with the Chief Prosecutor's Office demanding that it rule on her previous request of 3 June 1999.

21. On 17 September 1999 the Sofia City Prosecutor's Office rejected the request of 3 June 1999 as it considered that it could not rule on its merits before the criminal proceedings had been completed.

22. In a decision of the Sofia City Prosecutor's Office of 28 January 2000 the criminal proceedings against the defendants in case No. 3/92 were terminated and, *inter alia*, the order for the applicant's detention was rescinded. It found that the actions of the defendants, including the applicant, did not constitute an offence under domestic criminal legislation at the time of the events. In particular, the funds in question had always been included as expenditures in the State budget, the decisions were adopted without exceeding the powers granted thereto under the existing

legislation and the provisions of such aid was in harmony with the State's international obligations. Reference was made to the decision of 5 May 1994 of the Vienna Court of Appeal to refuse the applicant's extradition and the *Lukanov* judgment (cited above) where the Court had found in respect of the same proceedings that:

> "...no evidence has been adduced to show that [the] decisions [for grating aid] were unlawful, that is to say contrary to Bulgaria's Constitution or legislation, or more specifically that the decisions were taken in excess of [their] powers..." (ibid. § 43).

23. On 27 March 2000 the Sofia Court of Appeals confirmed the decision of the Sofia City Prosecutor's Office to terminate the criminal proceedings against, *inter alia*, the applicant and the said decision became final.

C. Relevant domestic law and practice

24. The relevant part of the State and Municipalities Responsibility for Damage Act of 1988 (the "SMRDA" : title changed in 2006) provided, as in force at the relevant time, that the State was liable for damage caused to private persons by the organs of the investigation, the prosecution and the courts for having unlawfully charged a private person with an offence if (a) he/she was found to be innocent or (b) the initiated criminal proceedings were terminated because (i) the deed was not perpetrated by the said person or (ii) the perpetrated deed was not an offence or because (c) the criminal proceedings were initiated (i) after the expiration of the statute of limitations for the offence or (ii) after the deed had been amnestied (section 2 (2)).

25. The right to compensation for pecuniary damage was fully inheritable, while that for non-pecuniary damage was inheritable only if the victim had initiated an action to that effect prior to his death (section 6 (1)).

26. Persons seeking redress for damage occasioned by decisions of the investigating and prosecuting authorities or the courts in circumstances falling within the scope of the SMRDA have no claim under general tort law as the Act is a *lex specialis* and excludes the application of the general regime (section 8(1) of the Act; решение № 1370 от 16.XII.1992 г. по гр.д. № 1181/92 г., IV г.о. and Тълкувателно решение № 3 от 22.04.2005 г. по т. гр. д. № 3/2004 г., ОСГК на ВКС).

THE LAW

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

27. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention. He contended that the authorities, even though they had allegedly been aware that his actions did not constitute an offence under domestic criminal legislation, had kept the criminal proceedings open for almost eight years. Moreover, this had continued well after the *Lukanov* judgment of 1997 (cited above) in the context of which the Court had examined the same criminal proceedings and had found them to be deficient because the actions of the applicant in that case had not constituted an offence under domestic criminal legislation at the time.

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..."

A. Period to be taken into consideration

28. The Court observes that the period to be taken into consideration did not begin to run on 9 July 1992 when the criminal proceedings were opened against the applicant (see paragraph 7 above), but on 7 September 1992 when the Convention entered into force in respect of Bulgaria. However, in order to determine whether the time which elapsed following this date was reasonable, it is necessary to take account of the stage which the proceedings had reached at that point (see *Proszak v. Poland*, judgment of 16 December 1997, *Reports* 1997-VIII, p. 2772, § 31). The Court notes that on 7 September 1992 the proceedings had been pending before the investigating authorities for just two months.

29. The criminal proceedings were terminated on 27 March 2000 (see paragraph 23 above).

30. Accordingly, the criminal proceedings against the applicant lasted for seven years, eight months and nineteen days of which a period of seven years, six months and twenty days falls within the Court's competence *ratione temporis*. During this period the criminal proceedings remained at the stage of the preliminary investigation.

B. Admissibility

1. The parties' submissions

31. The Government submitted that the applicant and his heirs failed to exhaust the available domestic remedies because they did not initiate an action for damages under the SMRDA. They noted that the criminal proceedings had been terminated on 27 March 2000 because the actions of the defendants, including the applicant, did not constitute an offence under domestic criminal legislation at the time of the events (see paragraphs 22 and 23 above). The Government claimed, therefore, that the applicant, and subsequently his heirs, had had a right of action under the SMRDA to seek redress from the authorities for the former having been unlawfully charged with an offence.

32. The heirs of the applicant disagreed. They noted that the applicant had passed away a month and a half before the criminal proceedings had been terminated against him (see paragraphs 1 and 23 above). Thus, he could not have initiated any such proceedings under the SMRDA prior to his death. Subsequently, they, as heirs of the applicant, could only initiate an action under the SMRDA seeking pecuniary damage in view of the restriction contained therein (see paragraph 25 above).

In any event, they noted that under the SMRDA damage could only have been sought for the applicant having been unlawfully charged with an offence and not in respect of the length of the criminal proceedings as such. Thus, they argued that the SMRDA did not provide a remedy that they or the applicant had to exhaust in respect of the complaint currently before the Court.

2. The Court's assessment

33. The Court reiterates that, according to Article 35 § 1 of the Convention, it may only deal with an issue after all domestic remedies have been exhausted. The purpose of Article 35 is to afford the Contracting States the opportunity of preventing or putting right the violations alleged against them before those allegations are submitted to the Court (see, for example, *Hentrich v. France*, judgment of 22 September 1994, Series A no. 296-A, p. 18, § 33 and *Remli v. France*, judgment of 23 April 1996, *Reports* 1996-II, p. 571, § 33). Thus, the complaint submitted to the Court must first have been made to the appropriate national courts, at least in substance, in accordance with the formal requirements of domestic law and within the prescribed time-limits. Nevertheless, the obligation to exhaust domestic remedies only requires that an applicant make normal use of remedies which are effective, sufficient and accessible in respect of his Convention grievances (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004).

34. The Court observes that in the present case, the applicant's complaint relates to the length of the criminal proceedings against him and falls to be examined under Article 6 § 1 of the Convention. It further observes that the said proceedings were terminated on 27 March 2000, while the applicant passed away on 13 February 2000 (see paragraphs 1 and 23 above).

35. The Court further notes that the Government submitted that the applicant and his heirs failed to exhaust an available domestic remedy under the SMRDA and referred to the existing possibility therein to obtain redress in the event of criminal proceedings having been terminated against an individual if his actions were found not to have constituted an offence. They did not, however, indicate how that would have remedied the complaint currently before this Court in respect of the alleged excessive length of the criminal proceedings. Moreover, the Government failed to present any copies of domestic court judgments where awards had been made under the SMRDA providing for redress for excessive length of criminal proceedings.

36. In view of the aforesaid, the Court does not find it proven by the Government that in the circumstances of the present case an action under the SMRDA would have provided for an enforceable right to compensation which could be considered an effective, sufficient and accessible remedy in respect of the applicant's complaint in respect of the alleged excessive length of the criminal proceedings. Furthermore, it does not appear that such a right is secured under any other provision of Bulgarian law (see paragraph 26 above).

37. Considering the above, the Court rejects the Government's objection of failure to exhaust the available domestic remedies.

38. It further finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

39. The Government did not submit observations on the merits of the applicant's complaint. The applicant's heirs reiterated the complaint.

40. 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 applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

41. Having examined all the material before it and noting the Government's failure to submit observations on the merits of the complaint, the Court finds that no facts or arguments capable of persuading it that the length of the criminal proceedings in the present case was reasonable have been put forward. Thus, having regard to its case-law on the subject, the

Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. In particular, the criminal proceedings against the applicant lasted over seven-and-a-half years, remained at the stage of the preliminary investigation for the whole duration, were stayed on three occasions for undisclosed reasons and lengths of time, were stayed for a period of more than four years between 1995 and 1999 and remained open well after the *Lukanov* judgment (cited above) which found, in respect of one of the other defendants in the same proceedings who had been charged for actions almost identical to those of the applicant, that the said actions did not constitute an offence under domestic criminal legislation. Moreover, it does not appear that the applicant's absence from the country had any direct affect on its duration.

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

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's heirs claimed 150,000 euros (EUR) as compensation for the non-pecuniary damage arising out of the alleged violation of the applicant's and their rights under the Convention. They claimed that the applicant had felt frustration, anguish and despair as a result of the length of the criminal proceedings which had been unjustified and politically motivated. The applicant's heirs also claimed that his standing in the country and abroad had been tarnished as a result of the protracted proceedings, that he had in effect been denied the opportunity to return to his native country for their duration in fear of being wrongfully persecuted and had been forced to sever various family and other relationships as a result. Due to his death prior to the termination of the proceedings he had also been denied the opportunity to return to his country.

44. The Government did not express an opinion on the matter.

45. The Court considers that the applicant had undoubtedly suffered non-pecuniary damage as a result of the protraction of the criminal proceedings against him for over seven years. Having regard to the circumstances of the present case, its case-law in similar cases and deciding on an equitable basis, the Court awards EUR 3,200 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

46. The applicant's heirs claimed 15,000 Bulgarian levs (approximately EUR 7,692) for the legal work by their lawyer on the proceedings before the Court. In support, a legal fees agreement was submitted between the lawyer and the applicant's heirs.

47. The Government did not express an opinion on the matter.

48. The Court reiterates that according to its case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the instant case, taking into account that a violation was found only of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings (see paragraph 41 above) and that no timesheet was presented for the work performed by the lawyer, the Court considers that the amount claimed is excessive and that a significant reduction is necessary in that respect. Accordingly, having regard to all relevant factors, the Court considers it reasonable to award the sum of EUR 500 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

49. 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. *Dismisses* the Government's preliminary objection based on non-exhaustion of domestic remedies;

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

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*

(a) that the respondent State is to pay the heirs of the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,700 (three thousand seven hundred euros) in respect of non-pecuniary damage and costs and expenses, 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;

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

Done in English, and notified in writing on 27 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President