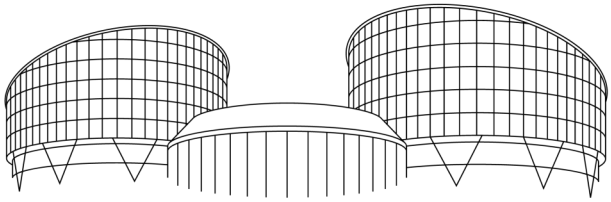

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GERDZHIKOV v. BULGARIA

(Application no. 41008/04)

JUDGMENT

STRASBOURG

4 February 2010

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 Gerdzhikov v. Bulgaria,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*
and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 12 January 2010,

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

PROCEDURE

1. The case originated in an application (no. 41008/04) 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 Dimitar Iliev Gerdzhikov ("the applicant"), on 9 November 2004.

2. The applicant was represented by Mrs P. Gosteva, a lawyer practising in Pazardzhik. The Bulgarian Government ("the Government") were represented by their Agents, Mrs S. Atanasova and Mrs M. Dimova, of the Ministry of Justice.

3. On 6 January 2009 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the length of the criminal proceedings and the lack of remedies in that respect. It also decided to rule on the admissibility and merits of the remainder of the application at the same time (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1957 and lives in the village of Rosen.

5. In 1992 the applicant was acting as a liquidator of an agricultural co-operative.

6. On an unspecified date in 1993 a preliminary inquiry was opened against him by the police in Pazardzhik. It concerned his alleged

mismanagement of property of the co-operative between April and December 1992. On 2 February 1993 the police confiscated the applicant's passport. In April 1993 and in the beginning of June 1993 he was questioned.

7. On 29 June 1994 the Pazardzhik regional public prosecutor's office instituted criminal proceedings against the applicant for mismanaging the assets of the co-operative thus causing it substantial pecuniary damage.

8. On an unspecified date in 1994 the investigator to whom the case had been assigned imposed a prohibition on the applicant's leaving the country.

9. No investigative steps were taken after the opening of the criminal proceedings and the applicant was never formally charged or indicted.

10. On at least thirteen occasions between 26 September 1994 and 5 November 2003, pursuant to oral requests by the applicant to terminate the proceedings and lift the travel ban, the Pazardzhik regional public prosecutor's office sent letters to the Pazardzhik Regional Investigation Service with instructions to close, and forward to it, the applicant's case file. Apparently, those instructions were not complied with.

11. On 2 July 2004 the Pazardzhik regional public prosecutor's office terminated the criminal proceedings against the applicant, finding that the limitation period for the prosecution of the respective offence had expired in 1997.

12. On 11 November 2004 the police lifted the travel ban imposed on the applicant (see paragraph 8 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

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

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

THE LAW

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

15. The applicant complained that the length of the criminal proceedings against him had not been reasonable. He relied on Articles 3, 6 § 1, 8 and 17 of the Convention. The Court finds that the complaint falls to be examined solely under Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

16. The Government submitted that the applicant had failed to exhaust the available domestic remedies because he had not initiated an action for damages under the SMRDA (see paragraph 14 above). Furthermore, they considered that he had not been adversely affected by the length of the criminal proceedings.

17. The applicant disputed these arguments.

A. Admissibility

18. The Court notes the Government's objection that the applicant had failed to avail himself of an available domestic remedy under the SRDA (see paragraph 16 above). It recalls that similar objections has been rejected in earlier cases against Bulgaria (see *Nalbantova*, cited above, § 35, and *Balabanov*, cited above, § 31) because the SMRDA does not provide for damages in respect of length of proceedings (see paragraph 14 above). The Court sees no reason to reach a different conclusion in the present case and accordingly rejects the Government's objection.

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

B. Merits

1. Period to be taken into consideration

20. The Court recalls that the period to be taken into account in the assessment of the length of criminal proceedings starts from an official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence or from some other act which carries the implication of such an allegation and which likewise substantially affects the situation of the suspect (see, among many others, *Kangasluoma v. Finland*, no. 48339/99, § 26, 20 January 2004).

21. In the case at hand the criminal proceedings against the applicant were formally opened on 29 June 1994 (see paragraph 7 above). However, his passport was confiscated by the police much earlier, on 2 February 1993. The preliminary inquiry against him started on an unspecified date in 1993 and in April 1993 he was questioned for the first time (see paragraph 6 above).

22. The Court has not been informed of the ground on which the applicant's passport was confiscated on 2 February 1993, in particular whether the measure was undertaken in the framework of the preliminary inquiry against the applicant. It cannot therefore assess whether the date of this action is relevant in respect of the starting moment of the period to be taken into consideration. Nor can the Court take a decision as to the start of that period on the basis of the date on which a preliminary inquiry was opened, because it has not been informed of that date (see paragraph 6 above).

23. On the other hand, the Court has been informed that in April 1993 the applicant was questioned in connection with the suspicion that he had mismanaged the agricultural co-operative's assets (see paragraph 6 above) and considers that this represented a sufficient official notification of an allegation that he had committed a criminal offence. Therefore, the Court finds that the period to be taken into consideration began in April 1993.

24. The period at issue ended on 2 July 2004 when the criminal proceedings against the applicant were terminated (see paragraph 11 above). Therefore, it lasted eleven years and three months during which the case remained at the stage of the pre-trial investigation.

2. Reasonableness of the period

25. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

26. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Pélissier and Sassi*, cited above). Having regard to its case-law on the subject, the Court does not see a reason to reach a different conclusion in the present case. In particular, it notes that the criminal proceedings against the applicant remained pending for more than eleven years, during which the investigative authorities remained completely inactive: they did not take any investigative steps and did not bring charges or file an indictment (see paragraph 9 above). This whole delay was therefore attributable to the authorities. Furthermore, the Pazardzhik Regional Investigation Service failed to comply with the Pazardzhik regional public prosecutor's office's

express instructions, given on numerous occasions in the course of many years, to close the applicant's case (see paragraph 10 above).

27. Therefore, the Court considers that in the instant case the length of the criminal proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. COMPLAINT UNDER ARTICLE 13 IN CONJUNCTION WITH ARTICLE 6 § 1 OF THE CONVENTION

28. The applicant also complained that he did not have effective remedies in respect of the length of the criminal proceedings, in breach of Article 13 of the Convention, which reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

29. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

30. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time. 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 v. Poland* [GC], no. 30210/96, § 156-7, ECHR 2000-XI).

31. The Court refers to its finding that an action for damages under the SMRDA did not represent an effective remedy in the case (see paragraph 18 above). Nor could the applicant resort to the remedy provided for in Article 239a of the Code of Criminal Procedure (see paragraph 13 above), because no charges had ever been brought against him and the provision was not applicable. The Government have not referred to the existence of any other relevant remedy under Bulgarian law, capable of preventing the alleged violation or its continuation, or of providing adequate redress (see *Sidjimov v. Bulgaria*, no. 55057/00, §§ 41-42, 27 January 2005, and *Balabanov*, cited above, §§ 32-33).

32. Accordingly, the Court concludes that in the present case there has been a violation of Article 13 of the Convention on account of the lack of

effective remedies under domestic law in respect of the length of the criminal proceedings against the applicant.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. The Government considered this claim to be excessive.

35. The Court observes that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis and taking into account all the circumstances of the case, it awards award him EUR 6,400 under this head.

B. Costs and expenses

36. The applicant also claimed EUR 2,000 for legal fees charged by his lawyer, Mrs Gosteva, and 203 Bulgarian levs (BGN), the equivalent of EUR 104, for translation, postage and other costs and expenses incurred before the Court. He presented a time-sheet for the work performed by his lawyer and receipts for the other expenses for BGN 185.20 (EUR 95). The Government considered these claims to be excessive.

37. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession, the above criteria and the fact that the case is rather simple, the Court considers it reasonable to award the sum of EUR 600, covering costs under all heads.

C. Default interest

38. 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 13 in conjunction with Article 6 § 1 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 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 6,400 (six thousand four hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (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* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 4 February 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Deputy Registrar	Peer Lorenzen President