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

FIFTH SECTION

CASE OF IVAN HRISTOV v. BULGARIA

(Application no. 32461/02)

JUDGMENT

STRASBOURG

20 March 2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Ivan Hristov v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 26 February 2008,

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

PROCEDURE

1. The case originated in an application (no. 32461/02) 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 Mr Ivan Angelov Hristov, a Bulgarian national who was born in 1938 and lives in Pleven ("the applicant"), on 21 August 2002.

2. The applicant was represented before the Court by Ms S. Margaritova-Vuchkova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Pasheva, of the Ministry of Justice.

3. On 3 April 2006 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the length of the first and the second criminal proceedings against the applicant. 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

4. The applicant is a businessman. At the relevant time he, *inter alia*, owned and operated a flour-mill. The criminal proceedings against him related to his business activities.

A. The first set of criminal proceedings against the applicant

5. On 13 September 1995 the prosecution authorities opened an investigation against the applicant for having provided banking services (collecting money deposits) without the requisite licence, contrary to Article 252 § 1 of the Criminal Code of 1968 ("the CC"). On 9 October 1995 the applicant was charged with the above offence and bailed.

6. On 15 December 1997 the charges were amended and the applicant was accused of having committed the above offence in concert with others.

7. On 20 December 1997 the investigator finished his work on the case and sent the file to the Pleven District Prosecutor's Office with a recommendation to bring the applicant to trial.

8. In the beginning of 1998 a prosecutor of the Pleven Regional Prosecutor's Office took over the case and on 25 February 1998 sent it back for further investigation.

9. After that the case file was transferred several times on undisclosed grounds as follows: on 22 December 1998 to the Pleven Regional Prosecutor's Office, on 4 January 1999 to the Supreme Cassation Prosecutor's Office, on 4 February 1999 to the Pleven Regional Prosecutor's Office and on 16 April 1999 to the Pleven Investigation Service.

10. On 3 June 1999 the applicant complained to the Pleven Appellate Prosecutor's Office about the excessive length of the proceedings. The complaint was filed through the Pleven Regional Prosecutor's Office, which forwarded it in February 2000. On 10 February 2000 the Pleven Appellate Prosecutor's Office ordered that the investigation be continued under the supervision of the Pleven District Prosecutor's Office.

11. The Pleven District Prosecutor's Office took over the case on 22 March 2000 and shortly after that sent it back for additional investigation.

12. Between 15 March and 12 April 2001 the investigator interviewed seven witnesses.

13. On 26 November 2001 he sent the file to the Pleven Regional Prosecutor's Office, proposing that the criminal proceedings against the applicant be discontinued.

14. The prosecutor to whom the case was assigned expressed her wish to withdraw. On 31 January 2002 the head of the Pleven Regional Prosecutor's Office rejected her request. Upon her appeal, on 22 February 2002 the Pleven Appellate Prosecutor's Office upheld this decision. However, on 18 June 2002 the Supreme Cassation Prosecutor's Office quashed both decisions and sent the case to the Pleven District Prosecutor's Office.

15. On 26 June 2002 the Pleven District Prosecutor's Office sent the case back for further investigation.

16. On 5 July 2002 the investigation authorities sent the case to the Pleven District Prosecutor's Office, which on the same day transmitted it to

the Pleven Regional Prosecutor's Office. The prosecutor to whom the case was assigned apparently did not undertake any actions on it.

17. On 20 April 2004 another prosecutor of the Pleven Regional Prosecutor's Office sent the case back for additional investigation.

18. In the meantime, on 25 March 2004 the applicant filed a request with the Pleven Regional Court under Article 239a of the Code of Criminal Procedure of 1974 (see paragraphs 31-33 below), asking to be either brought to trial or to have the proceedings against him discontinued. Accordingly, on 15 April 2004 the Pleven Regional Court, having found that the length of proceedings against the applicant had exceeded the time stipulated in that provision, instructed the Pleven Regional Prosecutor's Office to indict the applicant or discontinue the proceedings. As the Pleven Regional Prosecutor's Office failed to comply with these instructions within the statutory two-month time-limit, on 26 August 2004 the Pleven Regional Court, acting upon the request of the applicant, discontinued the proceedings. This decision entered into force on 20 September 2004.

B. The second set of criminal proceedings against the applicant

19. On 8 April 1997 the prosecution authorities opened an investigation against the applicant on suspicion that he had obtained large-scale unlawful gains (a credit from a bank) by using forged documents, contrary to Article 212 § 3 of the CC. On 16 June 1997 the applicant was charged with the above offence and detained. On 21 July 1997 he was released on bail.

20. On unspecified dates the charges were amended to include also forgery committed in an official capacity (contrary to Article 310 of the CC), drawing-up a false document in an official capacity (contrary to Article 311 of the CC), large-scale fraud (contrary to Article 211 of the CC), based on the allegations of a contractor with whom the applicant had a dispute about the performance of a contract, and making a false declaration to avoid paying taxes (contrary to Article 313 § 2 of the CC).

21. On 12 and 13 February 1998 the applicant was allowed to inspect the materials in the case file.

22. On 16 February 1998 the investigator in charge of the case finished his work and sent the file to the Pleven Regional Prosecutor's Office with a proposal to bring the applicant to trial.

23. On 26 January 2000 the Pleven Regional Prosecutor's Office dropped all charges except two – large-scale fraud and making a false declaration. The next day, 27 January 2000, it submitted an indictment against the applicant to the Pleven District Court.

24. On 31 January 2000 the case was set down for hearing.

25. At the hearing, which took place on 27 April 2000, the Pleven District Court remitted the case to the prosecution authorities, noting that

they had made a number of errors in charging the applicant and drafting the indictment, thus infringing his defence rights.

26. On 13 October 2000 the Pleven District Prosecutor's Office sent the case back for further investigation.

27. On 25 March 2004 the applicant filed a request with the Pleven Regional Court under Article 239a of the Code of Criminal Procedure of 1974 (see paragraphs 31-33 below), asking that his case be examined on the merits by a court or, alternatively, that the proceedings be discontinued. It is unclear whether this request was acted upon.

28. On 28 April 2004 the investigator finished his work on the case and sent it to the Pleven District Prosecutor's Office with a proposal to discontinue the proceedings against the applicant.

29. On 5 November 2004 the Pleven Regional Prosecutor's Office discontinued the criminal proceedings against the applicant on the ground that the charges had not been made out.

30. In a final decision of 7 January 2005, given pursuant to the appeal of the victim of the alleged offence, the Pleven District Court upheld the discontinuation.

II. RELEVANT DOMESTIC LAW

31. An amendment to the Code of Criminal Procedure of 1974 which entered into force on 2 June 2003 introduced the possibility for an accused person to request that his case be brought for trial if the investigation has not been completed within two years in cases concerning serious offences and one year in all other cases (new Article 239a of the Code, as in force until 28 April 2006). By paragraph 140 of the transitional provisions of the 2003 amendment, that possibility applies with immediate effect in respect of investigations opened before June 2003. On 29 April 2006 Article 239a was superseded by Articles 368 and 369 of the Code of Criminal Procedure of 2005, which are similarly worded.

32. The procedure under these provisions is as follows. The accused may submit a request to the relevant court which has seven days to examine the file. It may refer the case back to the prosecuting authorities or terminate the criminal proceedings. If the case is referred back to the prosecution authorities, they have two months to file an indictment with the trial court or terminate the proceedings, failing which the court must terminate the proceedings against the accused who had filed the request.

33. The reasons for the bill introducing the June 2003 amendment said that such a mechanism was necessary to secure observance of the right to trial within a reasonable time as guaranteed by the Convention.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LENGTH OF THE PROCEEDINGS

34. The applicant complained that the length of the two sets of criminal proceedings against him had been unreasonable, in breach of Article 6 § 1 of the Convention, which reads, as relevant:

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

35. The Government contested that allegation.

A. Admissibility

36. The Court notes at the outset that both sets of criminal proceedings against the applicant were discontinued prior to trial, the first on account of the use by the applicant of the remedy provided by the new Article 239a of the Code of Criminal Procedure of 1974 (see paragraphs 31-33 above), and the second on account of the prosecution authorities' decision to drop the charges against the applicant. The issue thus arises whether the applicant may still claim to be a victim within the meaning of Article 34 of the Convention.

37. Concerning the first set of proceedings, the Court observes that their discontinuation was grounded on the authorities' finding that their length had been excessive. The question whether the applicant may still claim to be a victim in respect of their length is therefore intimately connected with the merits of his complaint, namely the extent of the alleged breach of his right to a trial within a reasonable time (see *Eckle v. Germany*, judgment of 15 July 1982, Series A no. 51, p. 32, § 70 *in fine*). Consequently, the Court considers that it should join it to the merits and will revert to it subsequently (see *Vasilev and Others v. Bulgaria*, no. 61257/00, § 29, 8 November 2007).

38. As regards the second set of proceedings, the Court notes that, despite the fact that the applicant made a request under Article 239a of the Code of Criminal Procedure of 1974 (see paragraphs 31-33 above), their discontinuation was entirely based on the authorities' finding that the charges against the applicant had not been made out. It cannot therefore be said that this discontinuation constituted any acknowledgment, whether explicit or implicit, that the applicant's case had not been heard within a reasonable time (see, *mutatis mutandis*, *Nankov v. the former Yugoslav Republic of Macedonia*, no. 26541/02, § 33, 29 November 2007). The

applicant may therefore still claim to be a victim in respect of the length of these proceedings.

39. The Court further considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The first set of criminal proceedings against the applicant

40. The period to be taken into consideration began on 9 October 1995, when the applicant was charged (see *Corigliano v. Italy*, judgment of 10 December 1982, Series A no. 57, p. 14, § 35 *in fine*), and ended on 20 September 2004, when the Pleven Regional Court's decision to discontinue the proceedings against him entered into force. It thus lasted almost nine years.

41. 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 (ibid., p. 14, § 37).

42. The parties presented arguments as to the way in which these criteria should apply in the present case.

43. The Court does not consider that the overall length of the proceedings can be explained by the complexity of the case. Nor does it find that the applicant was responsible for any delays. On the other hand, a number of delays are attributable to the authorities. In particular, the Court notes that during the entire period to be taken into consideration – almost nine years – the proceedings remained at the preliminary investigation stage. Such a time-span appears excessive. The Court further observes that there were lengthy periods during which no activity seems to have taken place. Such gaps occurred between October 1995 and December 1997, between February 1998 and March 2000, between March 2000 and March 2001, and between July 2002 and April 2004. The Court also notes that the numerous transfers of the case between the investigators and the various prosecution offices contributed further to the delay.

44. The Court thus comes to the conclusion that the length of the proceedings exceeded the “reasonable time” prescribed by Article 6 § 1 of the Convention.

45. However, the Court must also examine whether this breach was sufficiently remedied through the discontinuation of the proceedings under Article 239a of the Code of Criminal Procedure of 1974 (see paragraphs 31-33 above) and whether the applicant thereby lost his victim status.

46. According to the Court's case-law, the mitigation of a sentence or the discontinuation of a criminal prosecution on account of the excessive length of the proceedings does not in principle remedy a failure to comply with the reasonable time requirement of Article 6 § 1, unless the national authorities have acknowledged either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Eckle*, cited above, p. 30, § 66).

47. In the instant case, the Court considers that by discontinuing the proceedings under Article 239a of the Code of 1974 the authorities in substance acknowledged the excessive duration of the preliminary investigation against the applicant. However, the Court must also determine whether this discontinuation constituted sufficient redress for the applicant's grievance.

48. On this point, the Court notes that when Article 239a was introduced in May 2003 the proceedings against the applicant had already lasted more than seven and a half years and that serious delays had already accumulated (see paragraph 43 above). It further notes that until that time the applicant had not been found guilty of an offence, nor had his alleged guilt been established, even by a trial court. It cannot therefore be said that the discontinuation of the proceedings against him remedied their excessive duration and amounted to sufficient redress for his complaint (see *Vasilev and Others*, cited above, § 40).

49. In view of the foregoing considerations, the Court concludes that the applicant may still claim to be a victim of a violation of his right to a trial within a reasonable time and that there has been a violation of Article 6 § 1 of the Convention on that account.

2. The second set of criminal proceedings against the applicant

50. The period to be taken into consideration began on 16 June 1997, when the applicant was charged (see *Corigliano*, cited above, p. 14, § 35 *in fine*). It ended on 7 January 2005, when the discontinuation of the proceedings was upheld by the Pleven District Court. It thus lasted seven years and almost seven months.

51. The criteria for assessing the reasonableness of the length of the proceedings have been set out in paragraph 41 above.

52. The parties presented arguments as to the way in which these criteria should apply in the present case.

53. The Court observes that the case bore a certain amount of complexity, as it concerned numerous charges. However, most of those were dropped in January 2000 and in any event cannot explain the overall length of the proceedings.

54. The Court further notes that the applicant does not seem responsible for any delays, whereas a number of delays seem attributable to the authorities. In particular, the Court notes that during the entire period to be

taken into consideration – more than seven and a half years – the proceedings remained at the preliminary investigation stage. Such a time-span appears excessive. The Court further observes that there were substantial periods of inactivity. Such gaps lasted from February 1998 to January 2000, as well as from October 2000 to April 2004. Further delay was caused by the remittal of the case to the prosecution authorities in April 2000.

55. The Court thus comes to the conclusion that the length of the proceedings exceeded the "reasonable time" prescribed by Article 6 § 1 of the Convention. There has therefore been a violation of that provision.

II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1

56. In his observations in reply to those of the Government, dated 27 November 2006, the applicant raised additional complaints.

57. He complained under Article 6 § 1 of the Convention that both sets of criminal proceedings against him had been unfair and that the charges had been determined by the prosecution authorities rather than by independent and impartial tribunals.

58. He also complained under Article 13 of the Convention that he did not have effective remedies against the excessive length of the criminal proceedings against him. In particular, he submitted that the remedy provided by the new Article 239a of the Code of Criminal Procedure of 1974 had not been effective in his case, as both proceedings had already lasted a long time before its introduction. No other remedies existed.

59. Finally, he alleged a breach of Article 1 of Protocol No. 1 stemming from the negative impact which the criminal proceedings had had on his business.

60. The Court does not consider it necessary to examine the substance of these complaints. It observes that the running of the six-month time-limit under Article 35 § 1 of the Convention is, as a general rule, interrupted by the first letter from the applicant indicating an intention to lodge an application and giving some indication of the nature of the complaints made. The running of this time-limit with regard to complaints not included in the initial application is interrupted only on the date when they are first submitted to the Court (see *Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001; and *Ekimdjiev v. Bulgaria* (dec.), no. 47092/99, 3 March 2005).

61. It is apparent from the partial admissibility decision in the present case (see *Hristov v. Bulgaria* (dec.), no. 32461/02, 3 April 2006) that before the communication of the application to the Government the applicant did not raise, expressly or in substance, any of the above complaints, which stem entirely from the two criminal proceedings against him. They were all

first formulated in his observations in reply to those of the Government, dated 27 November 2006, whereas the criminal proceedings against him had come to an end on 20 September 2004 and on 7 January 2005 respectively, more than six months before that.

62. It follows that these complaints were introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 40,000 euros (EUR) for the non-pecuniary damage sustained on account of the length of the first criminal proceedings, and EUR 50,000 for the non-pecuniary damage suffered as a result of the second criminal proceedings. He said that these amounts were warranted by the utter groundlessness of the charges against him, which had made the length of the proceedings even more acutely detrimental. The second criminal proceedings, in the course of which he had been detained on remand for a certain period of time, had in addition negatively impacted on his health.

65. The applicant also claimed 923,807 Bulgarian levs (BGN) in pecuniary damages. He submitted that he had lost this amount as a result of the early termination of contracts by clients of his flour-mill, who had been worried by the negative impact of the criminal proceedings against him on their businesses.

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

67. The Court does not discern a sufficient causal link between the violations found and the pecuniary damage alleged; it therefore rejects this claim (see *Eckle v. Germany* (Article 50), judgment of 21 June 1983, Series A no. 65, pp. 9-10, § 20). On the other hand, it awards the applicant EUR 8,800, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant also sought the reimbursement of EUR 2,500 for lawyer's fees in the proceedings before the Court, plus BGN 350 for translation, BGN 150 for clerical expenses, and BGN 122 for postage. He requested that any amount awarded by the Court under this head be transferred to the account of his legal representative, Ms S. Margaritova-Vuchkova.

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

70. According to the Court's 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 present case, bearing in mind the information in its possession and the above criteria, and also noting that part of the applicant's complaints were declared inadmissible, the Court considers it reasonable to award the sum of EUR 1,000, plus any tax that may be chargeable, covering costs under all heads. This amount is to be paid in the bank account of the applicant's representative, Ms S. Margaritova-Vuchkova.

C. Default interest

71. 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 complaints concerning the length of the first and the second sets of criminal proceedings against the applicant admissible and the remainder of the application inadmissible;

2. *Holds* that there have been violations of Article 6 § 1 of the Convention on account of the length of the first and the second sets of criminal proceedings against the applicant;

3. *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 on the date of settlement:

(i) EUR 8,800 (eight thousand eight hundred euros) in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros) in respect of costs and expenses, to be paid in the bank account of the applicant's legal representative, Ms S. Margaritova-Vuchkova;

(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 20 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President