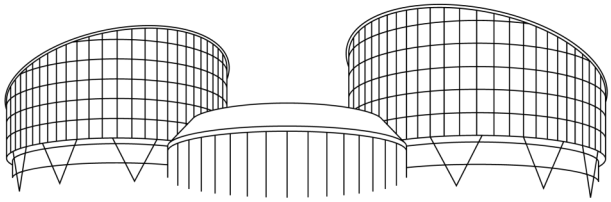

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KOSTOV AND YANKOV v. BULGARIA

(Application no. 1509/05)

JUDGMENT

STRASBOURG

22 April 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 Kostov and Yankov 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,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 1509/05) 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 the Bulgarian nationals Mr Asen Angelov Kostov and Mr Hristo Yankov Yankov ("the applicants") on 14 December 2004.

2. The applicants were represented by Mrs S. Stefanova and Mr A. Atanasov, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Mrs R. Nikolova, of the Ministry of Justice.

3. On 30 September 2008 the Court decided to communicate to the Government the applicants' complaints concerning the length of the criminal proceedings against them and the lack of remedies in that respect. It decided also to rule on the admissibility and merits of those complaints at the same time (Article 29 § 3). The complaints of the remaining initial applicants were dismissed as inadmissible.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1961 and 1966 respectively and live in the village of Stryama.

5. On different dates in 1991 criminal proceedings were instituted against the applicants and four other persons. The applicants were charged

with the theft of a car tyre. An indictment against them was introduced at court on 29 June 1992.

6. On 3 December 1992 the Plovdiv Regional Court remitted the case to the investigation authorities finding that there had been procedural violations.

7. No investigative measures were taken until September 1998 when one of the accused was questioned. In the following months the remaining accused were also questioned and other evidence was collected.

8. On several occasions during these months a prosecutor from the Plovdiv regional prosecutor's office instructed the investigation authorities to take further investigative measures and make up for certain earlier breaches of the procedural rules.

9. On an unspecified date towards the end of 1999 the investigation was completed. The prosecution filed an indictment with the Plovdiv Regional Court and the applicants were brought to trial.

10. In a judgment of 24 June 2002 the Plovdiv Regional Court acquitted the applicants. One of the remaining accused was also acquitted and the others were convicted and received suspended sentences.

11. Upon appeal by the prosecution, on 8 October 2004 the Plovdiv Court of Appeal upheld fully the Regional Court's judgment. In affirming the suspended sentences of three of the accused, it referred, *inter alia*, to the excessive length of the proceedings, finding that

> "the criminal proceedings [had been] subject to excessive delays without there having been an objective justification for that delay ".

12. Upon cassation appeal by the prosecution, on 1 November 2005 the Supreme Court of Cassation upheld the lower courts' judgments and reiterated the Court of Appeal's findings in respect of the excessive length of the proceedings.

THE LAW

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

13. The applicants complained that the length of the criminal proceedings against them had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which, in so far as relevant, 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..."

14. The Government argued that the applicants had failed to exhaust the available domestic remedies, as required by Article 35 § 1 of the

Convention, because they had failed to appeal against the prosecution's decisions ordering the investigation authorities to take further investigative actions or make up for procedural violations (see paragraph 8 above) and thus bring about the speeding up of the proceedings. Concerning the merits of the complaint, the Government considered that the length of the proceedings had not been unreasonable, given the complexity of the case and the fact that there had been several accused.

15. The applicants contested these arguments.

A. Admissibility

16. The Court notes that the Government raised an objection for non-exhaustion of domestic remedies (see paragraph 14 above). It observes that indeed the applicants did not appeal against the decisions of the prosecution referred to by the Government. However, it does not consider that the applicants should have been required to appeal against decisions which were, essentially, in their favour as the prosecution authorities ordered that further investigative actions be taken and certain earlier procedural violations be made up for. Furthermore, those decisions, taken in the range of several months (see paragraph 8 above), did not cause any significant delay and their possible appeal on the part of the applicants would not have led to any meaningful speeding up of the proceedings. For these considerations, the Court dismisses the Government's objection based on non-exhaustion of domestic remedies.

17. Furthermore, the Court notes 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

18. The Court notes that the criminal proceedings against the applicants started in 1991 (see paragraph 5 above). However, the period to be taken into consideration began only on 7 September 1992 when the Convention entered into force in respect of Bulgaria. At this moment the criminal proceedings were pending at the pre-trial stage. The period in question ended on 1 November 2005 when the Supreme Court of Cassation gave a final judgment (see paragraph 12 above). It thus lasted thirteen years, one month and twenty-four days for pre-trial proceedings and three levels of jurisdiction.

19. 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)

20. 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). In the present case, it notes that it was acknowledged even by the domestic courts that the criminal proceedings had lasted an unreasonably long period of time (see paragraphs 11-12 above). Having examined all the material submitted to it, the Court does not see a reason to reach a different conclusion. In particular, it notes that the proceedings lasted for more than thirteen years (see paragraph 18 above) and that there appear to be no significant delays attributable to the applicants. On the other hand, the authorities' inaction for a period of almost six years, from the end of 1992 to September 1998 (see paragraphs 6-7 above), caused a major delay.

21. In view of the above, the Court concludes that there has been a breach of Article 6 § 1 of the Convention in the case.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

22. The applicants further complained under Article 13 of the Convention that they had no effective remedies in respect of the length of the proceedings. Article 13 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."

23. The Government did not comment.

A. Admissibility

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

B. Merits

25. 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).

26. In the present case, the Court refers to its finding above (see paragraph 16) that an appeal against the decisions of the prosecution

authorities ordering that further investigative actions be taken or that certain procedural violations be made up for did not represent an effective remedy. Nor has the Court been informed of any other remedy that could have prevented the violation of Article 6 § 1 or its continuation, or provided adequate redress.

27. 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.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

28. 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

29. The applicants claimed 15,000 euros (EUR) for each of them in respect of non-pecuniary damage.

30. The Government argued that those claims were excessive.

31. The Court considers that the applicants must have suffered anguish and distress as a result of the violations of their rights found in the case. Ruling on an equitable basis, it awards award each of them EUR 3,500 under that head.

B. Costs and expenses

32. The applicants also claimed EUR 3,235 for the costs and expenses incurred before the Court. In support of this claim they presented a time sheet for the work performed by their representatives, Mrs Stefanova and Mr Atanasov. Furthermore, they requested that any sum awarded under this head be transferred directly into the bank accounts of Mrs Stefanova and Mr Atanasov.

33. The Government considered this claim to be excessive.

34. 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 circumstances of the case and the above criteria, the Court considers it reasonable to award the sum of EUR 600 covering costs under all heads.

C. Default interest

35. 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 on account of the excessive length of the criminal proceedings against the applicants;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedies in respect of the length of the proceedings;

4. *Holds*
   (a) that the respondent State is to pay, 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) to each applicant, EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) jointly to the two applicants, EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be transferred directly into the bank accounts of the applicants' legal representatives;
   (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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President