FIFTH SECTION

CASE OF KALPACHKA v. BULGARIA

(Application no. 49163/99)

JUDGMENT

STRASBOURG

2 November 2006

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 Kalpachka 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 9 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 49163/99) 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 Ms Lyubima Kostadinova Kalpachka, a Bulgarian national who was born in 1965 and lives in Blagoevgrad ("the applicant"), on 26 May 1999.

2. The applicant was represented by Mr V. Vasilev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

3. The applicant alleged, in particular, that two sets of criminal proceedings against her had not been concluded in a reasonable time.

4. The application was allocated to the First 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.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

6. By a decision of 19 May 2005 the Court (First Section) declared the application partly admissible.

7. The Government and the applicant provided further information at the request of the Court (Rule 59 § 1).

8. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rules 25 § 5 and 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. At the material time the applicant worked as a journalist for *Struma*, a local newspaper based in the town of Blagoevgrad, reporting on the work of law-enforcement agencies and investigating crime-related news. On 16 December 1996 the term of her contract with the newspaper expired and her employment was terminated.

A. The first set of criminal proceedings against the applicant

10. On 19 September 1994 *Struma* ran an article titled "Camp head counsellor mistreats twenty-seven children". In that article, written by the applicant, the manager of a schoolchildren's summer camp, Mr P.Y., was accused of having beaten and ill-treated the children in his care.

11. On 22 August 1994 Mr P.Y. complained to the Razlog District Prosecutor's Office. The Office conducted a preliminary inquiry in the course of which the applicant was questioned on 12 September 1994.

12. On 14 September 1994 the Blagoevgrad District Prosecutor's Office opened an investigation against the applicant.

13. On 13 October 1994 the applicant was charged with having defamed Mr P.Y. through a newspaper article containing disparaging facts about him and imputing a crime to him, the said acts being related to Mr P.Y.'s official duties. As a measure to secure her court appearance she was directed not to leave the town without authorisation. She was questioned.

14. On 7 and 9 December 1994 and 5 January 1995 the investigator in charge of the case questioned the applicant, Mr P.Y., and seven witnesses.

15. On 6 January 1995 he concluded his work on the case and sent the file to the prosecutor, recommending the applicant's committal for trial.

16. On 16 January 1995 the Blagoevgrad District Prosecutor's Office remitted the case to the investigator with instructions to append a document establishing Mr P.Y.'s status as an official and a certified list of the schoolchildren who had been at the camp at the time of the incident.

17. The prosecutor's instructions were complied with and on 9 February 1995 the applicant was again allowed to consult the case-file. The case-file was then forwarded to the prosecution.

18. On 6 March 1995 the Blagoevgrad District Prosecutor's Office indicted the applicant.

19. The Blagoevgrad District Court set the case down for hearing on 28 September 1995, calling seven witnesses. The panel of the court consisted of one judge and two lay judges.

20. The hearing listed for 28 September 1995 did not take place because four of the seven witnesses did not show up and the applicant asked the court for time to retain a lawyer. The court adjourned the case, fined the witnesses who had failed to appear and ordered that they be brought to the next hearing by force.

21. A hearing was held on 8 November 1995. All witnesses but one were present. Mr P.Y. intervened as a civil claimant and a private prosecuting party. He asked for leave to call one witness. The court acceded to his request. The applicant and all witnesses present, including the one requested by Mr P.Y., were questioned. Finding that one witness was absent, the court adjourned the case, ordering that he be brought to the next hearing by force.

22. On 29 November 1995 counsel for the applicant requested that the next hearing, which had been listed for the following day, 30 November 1995, be adjourned, as he would be representing a client at the Blagoevgrad Regional Investigation Service at that time. On 30 November 1995 the Blagoevgrad District Court decided to adjourn the hearing, because counsel for the applicant and the unquestioned witness were absent.

23. A hearing listed for 9 February 1996 failed to take place because the applicant was ill and could not attend and because the remaining witness was absent as well. On the motion of the prosecution the court decided to require that the applicant guarantee her court appearance with bail instead of a pledge not to leave town. The applicant appealed against this order and on 22 February 1996 the Blagoevgrad Regional Court overturned it.

24. A hearing listed for 29 March 1996 could not take place because the applicant was in hospital and unable to appear in court, and because the remaining witness was absent as well. The prosecution again requested the court to change the measure imposed on the applicant, but its motion was rejected.

25. A hearing was held on 17 May 1996. The remaining witness showed up and was questioned. The court heard the parties' oral argument.

26. By a judgment of the same date the Blagoevgrad District Court found the applicant guilty of having defamed Mr P.Y. and sentenced her to five months' imprisonment, suspended, and to a public reprimand. She was ordered to pay Mr P.Y. 45,000 old Bulgarian levs (BGL) in non-pecuniary damages.

27. On 31 May 1996 the applicant appealed to the Blagoevgrad Regional Court.

28. A hearing was held on 3 December 1996. No new evidence was adduced by the parties. The court heard their oral argument.

29. By a judgment of 24 June 1997 the Blagoevgrad Regional Court upheld the conviction, but reduced the applicant's sentence to a BGL 5,000 fine.

30. On 14 August 1997 the applicant lodged a petition for review with the Supreme Court of Cassation.

31. The court held a hearing on 26 January 1998.

32. By a judgment of 2 February 1998 the Supreme Court of Cassation quashed the lower courts' judgments and remitted the case. It found that the minutes of all the hearings held by the Blagoevgrad District Court but the last one contained the name of one lay judge, whereas the minutes of the last hearing and its judgment contained the name of another. It was thus highly probable that the panel of the court which had decided the case was different from the panel which had sat at the trial. This was a material breach of Article 257 § 1 of the Code of Criminal Procedure, which required that the composition of the court remain the same throughout the trial. It necessitated the quashing of the Blagoevgrad District Court's judgment, as well as of the judgment of the Blagoevgrad Regional Court which had failed to spot this shortcoming, and the remitting of the case for a fresh examination by the first-instance court.

33. On remittal the Blagoevgrad District Court set the case down for hearing on 23 June 1998. The applicant was not duly summoned and did not appear. The prosecution requested that the proceedings be transferred to another venue, the Razlog District Court, as most of the witnesses lived in Razlog. The court agreed and, in accordance with the relevant procedural rules, sent the case to the Supreme Court of Cassation for its forwarding to the Razlog District Court.

34. By an order of 2 October 1998 the Supreme Court of Cassation rejected the Blagoevgrad District Court's request and returned the case to it for continuation of the proceedings. It held that since the Blagoevgrad District Court had already started examining the case, procedural economy did not require a change of venue.

35. After the returning of the case the Blagoevgrad District Court held a hearing on 24 March 1999. The prosecution requested to be allowed to "particularise" the charges. The applicant's defence objected, stating that the rules of criminal procedure did not provide for a "particularisation" of the charges; the pretended "particularisation" was in fact an amendment of the charges. In its view, such an amendment during the trial would infringe the applicant's defence rights. The Blagoevgrad District Court held that the charges had in fact been amended, which infringed the applicant's defence rights. Accordingly, the court remitted the case to the prosecution authorities with instructions to formally present the applicant with the amended charges and thereafter resubmit the indictment against her.

36. On 10 May 1999 the Blagoevgrad District Prosecutor's Office sent the case to the Blagoevgrad Regional Investigation Service with a view to securing compliance with the court's instructions.

37. Apparently no procedural activity took place after that.

38. In March 2000 the Criminal Code was amended, installing more lenient penalties for defamation and making it a privately prosecutable offence in all cases. Accordingly, the limitation period for the offence allegedly committed by the applicant became shorter (from seven and a half years to three years), expiring in 1997. In view of this, on 12 April 2000 the applicant requested the prosecution authorities to discontinue the proceedings.

39. By a decision of 21 June 2000 the Blagoevgrad District Prosecutor's Office decided to discontinue the proceedings. It found that following the amendments of the Criminal Code of March 2000 the offence with which the applicant had been charged had become privately prosecutable. It also found that the alleged victim, Mr P.Y., had not expressed the wish that the proceedings continue within three months after the entry of the amendments into force.

40. The decision was forwarded *ex officio* to the Blagoevgrad District Court, which upheld it with an identical reasoning on 29 June 2000, without holding a hearing. It was not notified to the applicant. According to her, she was not informed about the discontinuation despite her numerous enquiries to the Blagoevgrad District Prosecutor's Office, and did not learn about it until April 2004, when she received the Government's observations on the admissibility and merits of the present case.

B. The second set of criminal proceedings against the applicant

41. On 2 November 1994 *Struma* published an article written by the applicant, in which she made allegations that Sanel EOOD, a municipally-owned company in the town of Sandanski, had been siphoned off and was being led towards insolvency by its managers, Mr I.S. and Mr R.T. through shady deals from which they had personally profited.

42. On 10 November 1994 Mr R.T. complained to the Blagoevgrad District Prosecutor's Office, alleging that the article had defamed him. On 17 November 1994 Mr I.S. also lodged a complaint, requesting the applicant to be charged.

43. On 3 May 1995 the Blagoevgrad District Prosecutor's Office opened an investigation against the applicant.

44. On 25 May 1995 the applicant was charged with having defamed Mr I.S. and Mr R.T. through a newspaper publication, by divulging vilifying facts about them, the said acts being related to their official duties. She was instructed not to leave town without authorisation and was questioned.

45. On 31 May and 1 June 1995 the investigator in charge of the case questioned the alleged victims, Mr I.S. and Mr R.T., and two other witnesses. They also gathered a number of pieces of written evidence.

46. On 11 July 1995 the investigator concluded his work on the case and sent the file to the prosecution with the recommendation that the applicant be committed for trial.

47. On 15 November 1995 the Blagoevgrad District Prosecutor's Office indicted the applicant.

48. The first hearing before the Blagoevgrad District Court, listed for 13 November 1996, failed to take place because the applicant did not appear. A witness was absent as well. The court changed the measure to secure the applicant's appearance to bail. On 26 November 1996 the applicant appealed against this order and on 22 February 1996 the Blagoevgrad Regional Court overturned it, holding that the applicant had not been summoned in a timely manner and had thus been justified in not showing up for the hearing.

49. Two hearings, fixed for 14 April and 4 June 1997, were adjourned because the applicant had not been duly summoned and did not show up. The court sent a letter to the regional police department with a request to indicate the exact address of the applicant.

50. A hearing took place on 20 October 1997. The court heard the applicant and questioned two prosecution witnesses and one defence witness. Two other prosecution witnesses, who had been duly summoned, did not show up. The prosecutor stated that he insisted on the questioning of the missing witnesses and also asked the court to admit in evidence the original of the article written by the applicant and the employment contracts of Mr I.S. and Mr R.T. Counsel for the applicant submitted as evidence copies of the documents on the basis of which the applicant had written the impugned article and some other pieces of written evidence. He also requested leave to call several witnesses. The court admitted in evidence the documents presented by the defence, acceded to the prosecution's and the defence's requests for the calling of witnesses, and adjourned the case.

51. The next hearing was held on 20 January 1998. The court questioned five witnesses. The prosecution requested leave to call one more witness. Counsel for the applicant adhered to this request and also asked the court to admit in evidence certain documents. The court agreed and adjourned the case.

52. The next hearing took place on 2 April 1998. The court admitted in evidence certain documents requested at the previous hearing. It adjourned the case, as the witness requested by the prosecution at the previous hearing had not been duly summoned and did not show up and the remainder of the documents requested by the defence at the previous hearing had not been produced by the persons which were in possession of them.

53. The next hearing was held on 2 June 1998. The court re-questioned one of the witnesses. The witness requested by the prosecution on 20 January 1998 was not duly summoned and did not show up. The prosecutor stated that he insisted on the witness's questioning and requested

leave to call another witness. The court gave leave over the objection of the applicant and adjourned the case.

54. The next hearing took place on 15 September 1998. The court questioned a witness for the prosecution. The prosecution requested the court to discontinue the trial and remit the case to the phase of the investigation, arguing that the charges against the applicant had not been formulated with sufficient precision and that her defence rights had thus been infringed. The court agreed and remitted the case.

55. Apparently no procedural activity took place after the remitting.

56. In view of the amendment of the Criminal Code of March 2000 (see paragraph 38 above), on 12 April 2000 the applicant requested the prosecution authorities to discontinue the proceedings.

57. By a decision of 21 June 2000 the Blagoevgrad District Prosecutor's Office decided to discontinue the proceedings. It found that following the amendments of the Criminal Code of March 2000 the offence with which the applicant had been charged had become privately prosecutable. It also found that the alleged victims, Mr R.T. and Mr I.S., had not expressed the wish that the proceedings continue within three months after the entry of the amendments into force.

58. The decision was forwarded *ex officio* to the Blagoevgrad District Court, which confirmed it with an identical reasoning on 29 June 2000, without holding a hearing. It was not notified to the applicant. According to her, she was not informed about the discontinuation despite her numerous enquiries to the Blagoevgrad District Prosecutor's Office, and did not learn about it until April 2004, when she received the Government's observations on the admissibility and merits of the present case.

II. RELEVANT DOMESTIC LAW

59. Article 237 of the Code of Criminal Procedure of 1974, as in force between January 2000 and May 2001, provided that in case the prosecution authorities decided to discontinue criminal proceedings before trial, they *ex officio* sent the case file to the competent court, which, sitting in private and without summoning the accused, could either quash the discontinuation, amend its grounds, or confirm it by means of a final decision. The Code did not make provision for the notification of final decisions to the persons concerned.

60. In May 2001 Article 237 of the Code was amended and thenceforth provided that the prosecution's decision to discontinue the proceedings was served on the accused and the victim of the alleged offence, who could then appeal against it to the competent court. The Code of Criminal Procedure of 2005 went along with this procedure as well. By its Article 243, as presently in force, a copy of the prosecution's decision to discontinue the proceedings is served on the accused and the victim of the alleged offence, who may

appeal against it to the competent first-instance court, whose decision is in turn subject to appeal before the competent second-instance court.

THE LAW

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

61. The applicant complained about the length of the two sets of criminal proceedings against her. She relied on Article 6 § 1 of the Convention, which provides, as relevant:

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

A. The first set of criminal proceedings against the applicant

1. The period to be taken into consideration

62. The applicant submitted that she had not been notified of the discontinuation of the proceedings in June 2000, contrary to the relevant procedure. Despite the numerous enquiries she had made to the registry of the Blagoevgrad District Prosecutor's Office she was unable to obtain any information about the status of the proceedings. Moreover, since the enquiries were oral, as was customary, she was unable to produce actual proof that they had taken place. She was thus unaware of the discontinuation of the proceedings until April 2004, when she received the Government's observations. Therefore, that date had to be taken as the end of the period under consideration.

63. The Government submitted that the period to be taken into account had begun on 14 September 1994, when the proceedings had been instituted, and had ended on 29 June 2000, when the Blagoevgrad District Court had confirmed the prosecution's decision to discontinue them. The applicant had not been notified of the discontinuation, as at the relevant time the procedure had not envisaged a right of appeal and hence notification of the person concerned had not been not a mandatory step in the procedure.

64. The Court, reiterating that the existence of a "charge" within the meaning of Article 6 § 1 is to be determined autonomously (see, among many other authorities, *Imbrioscia v. Switzerland*, judgment of 24 November 1993, Series A no. 275, p. 13, § 36), considers that the period to be taken into consideration began on 12 September 1994, when the

applicant was first questioned in the course of the preliminary inquiry against her (see paragraph 11 above).

65. Concerning the end of this period, the Court notes that one of the purposes of the right to a trial within a reasonable time is to protect individuals from remaining too long in a state of uncertainty about their fate (see *Withey v. the United Kingdom* (dec.), no. 59493/00, ECHR 2003-X; citing *Stögmüller v. Austria*, judgment of 10 November 1969, Series A no. 9, p. 40, § 5). Accordingly, criminal proceedings will, as a rule, end with an official notification to the accused that they are no longer to be pursued on those charges such as would allow a conclusion that their situation could no longer be considered to be substantially affected (ibid.). It must therefore be determined at which point in time this took place in the case at hand.

66. The parties are in agreement that the applicant was not sent a notice of the decision of the Blagoevgrad District Prosecutor's Office of 21 June 2000 for discontinuing the proceedings against her or of the decision of the Blagoevgrad District Court of 29 June 2000 which upheld the discontinuation (see paragraphs 62 and 63 above). Moreover, no evidence has been produced which would allow the Court to conclude that the applicant did indeed take cognisance of these decisions before receiving copies thereof enclosed to the Government's observations in the present case in April 2004. The Court thus accepts that she came to know about the end of the proceedings at that time. Therefore, the period to be taken into consideration ended in April 2004 (see, *mutatis mutandis*, *Yemanakova v. Russia*, no. 60408/00, §§ 37-40, 23 September 2004).

67. Accordingly, the period to be taken into consideration amounted to nine years and seven months for four levels of court.

2. Reasonableness of the length of the proceedings

68. The reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the authorities dealing with the case (see, as a recent authority, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 45, ECHR 2004-XI).

69. The applicant submitted that the proceedings had lasted unreasonably long. She pointed out that no progress had been made after the remitting of the case back to the investigation phase.

70. The Government submitted that the length of the proceedings had not been unreasonable. They conceded that the case had not been factually or legally complex. However, they were of the view that no unjustified delays had taken place. The investigation had been conducted promptly. The proceedings before the first instance court had only lasted eight months. Three of the six hearings held by that court had been adjourned because of the applicant. The failure of certain witnesses to show up had further

delayed the proceedings, but the court had reacted to that and had ordered that they be brought by force. It had also listed the hearings at short intervals. No unwarranted delays had taken place during the later stages of the proceedings, when the case had been remitted back to the investigation phase in deference to the applicant's defence rights.

71. In the Court's opinion, the case does not appear particularly complex either factually or legally. On the other hand, it concerned the criminal liability of a journalist, which could have a direct impact on her career and had clear implications for her freedom of expression. A certain level of diligence was thus required from the authorities.

72. The applicant may be criticised for having caused in part the adjournment of the hearings on 28 September and 30 November 1995 and on 9 February and 29 March 1996. It must however be noted that all these hearings were postponed also on account of the absence of witnesses (see paragraphs 20 and 22-24 above). Another lengthy delay which may partly be attributed to the applicant's conduct is the time following the adopting of the decisions to discontinue the proceedings in June 2000. It must be noted that she had requested such a discontinuation only two months earlier, in April 2000, and could hence have reasonably expected a response to her request (see paragraph 38 above). While no evidence has been produced before the Court to show that she did learn about the discontinuation before April 2004, almost four years later, it seems that a substantial part of this interval was due to her not taking appropriate steps to obtain information on that at the court's and the prosecutor's office's registries. It should be noted in this connection that the applicant lived in the same town and was legally represented.

73. As regards the delays imputable to the authorities, the Court considers that until the Supreme Court of Cassation's judgment of 2 February 1998 the examination of the case proceeded at a good pace, with one significant delay of six months between the date of the hearing before the Blagoevgrad Regional Court and the date when it gave judgment (see paragraphs 28 and 29 above). However, the Court notes that the Blagoevgrad District Court's and the Blagoevgrad Regional Court's judgments were quashed and the case was remitted for a retrial solely on account of a procedural flaw which was obvious and could have easily been prevented: the difference in the composition of the first-instance court during the trial and at the time when it gave judgment (see paragraphs 19 and 32 above). This breach of the rules of procedure effectively nullified the judicial proceedings up to that date and obliged the authorities to start them anew. Moreover, the trial resumed only on 24 March 1999 – more than a year later –, on account of the vain attempt of the prosecution to obtain a change of venue (see paragraphs 33 and 34 above). No activity took place after that, until the proceedings were discontinued fifteen months later, in June 2000 (see paragraphs 37 and 39 above). It is furthermore striking that

it was only after the case had gone through three levels of court that the prosecution itself, by making a belated request to amend the charges, which could have easily been done at a much earlier phase, caused its remitting to the phase of the investigation, thus rendering the entire hitherto procedure useless (see paragraph 35 above). In this connection, the Court notes that in previous cases against Bulgaria it has already observed that inordinate delays in criminal proceedings have been brought about by the unjustified remittal of criminal cases to the investigation stage (see *Vasilev v. Bulgaria*, no. 59913/00, § 93, 2 February 2006, citing *Kitov v. Bulgaria*, no. 37104/97, § 73, 3 April 2003; see also *S.H.K. v. Bulgaria*, no. 37355/97, §§ 19 and 38, 23 October 2003; *E.M.K. v. Bulgaria*, no. 43231/98, §§ 61 and 144, 18 January 2005; and *Nedyalkov v. Bulgaria*, no. 44241/98, § 92, 3 November 2005). Finally, the Court notes that the applicant was not notified about the discontinuation of the proceedings in June 2000 (see paragraph 40 above).

74. Having regard to the foregoing, the Court concludes that the length of the proceedings failed to satisfy the reasonable-time requirement of Article 6 § 1 of the Convention. There has therefore been a violation of that provision.

B. The second set of criminal proceedings against the applicant

1. The period to be taken into consideration

75. The applicant submitted that she had not been notified of the discontinuation of the proceedings in June 2000, contrary to the relevant procedure. Despite the numerous enquiries she had made to the registry of the Blagoevgrad District Prosecutor's Office she was unable to obtain any information about the status of the proceedings. Moreover, since the enquiries were oral, as was customary, she was unable to produce actual proof that they had taken place. She was thus unaware of the discontinuation of the proceedings until April 2004, when she received the Government's observations. Therefore, that date had to be taken as the end of the period under consideration.

76. The Government submitted that the period to be taken into account had begun on 3 May 1995, when the proceedings had been instituted, and had ended on 29 June 2000, when the Blagoevgrad District Court had confirmed the prosecution's decision to discontinue them. The applicant had not been notified of the discontinuation, as at the relevant time the procedure had not envisaged a right of appeal and hence notification of the person concerned had not been not a mandatory step in the procedure.

77. The Court considers that the period to be taken into consideration began on 31 May 1995, when the applicant was charged and was prohibited from leaving her town without authorisation (see paragraph 44 above). As

to the end of the period, the Court refers to its reasoning concerning the first set of proceedings (see paragraphs 65 and 66 above) and accordingly takes the date on which the applicant received the Government's observations in the present case – April 2004.

78. The period to be taken into consideration thus lasted eight years and eleven months for one level of court.

2. Reasonableness of the length of the proceedings

79. The criteria for assessing the reasonableness of the length of the proceedings have been set out in paragraph 66 above.

80. The applicant argued that the proceedings had lasted unreasonably long. In particular, no activity had taken place after the remitting of the case back to the investigation phase.

81. The Government submitted that the length of the proceedings had not been unreasonable. They conceded that the case, like the first one, had not been legally complex. However, they submitted that no unjustified delays had taken place. The investigation had been very quick. Several hearings listed by the first-instance court had been adjourned for various reasons, such as the failure to summon the applicant in due time for one of them and the fact that she had changed her address, but had been summoned at the old one. However, the court had listed the hearings at short intervals, thus avoiding undue delay.

82. The Court considers that the second case against the applicant was more complex factually, but that its legal complexity was comparable to that of the first one. Moreover, it likewise concerned the criminal liability of a journalist, and, consequently, equally required certain diligence on the part of the authorities.

83. It does not seem that the applicant can be held responsible for the adjournment of the hearings on 13 November 1996 and 14 April and 4 June 1997 on account of her absence, because the respective summonses had not reached her in due time (see paragraphs 48 and 49 above). However, it appears that, as in the first set of proceedings against her, the interval between the discontinuation of the proceedings in June 2000 and the moment when she learned about it – April 2004 –, was in large part due to her not taking appropriate steps to obtain information about their course (see paragraph 58 above).

84. The major delays attributable to the authorities occurred between 15 November 1995, when the indictment was submitted to the first-instance court, and 13 November 1996, the date for which the case was initially set down for hearing, and between 15 September 1998, when the case was remitted to the investigation stage, and June 2000, when the proceedings were discontinued (see paragraphs 47, 48, 54, 55 and 57 above). These lapses amounted in total to two years and eight months. It is furthermore striking that only after the case had gone through numerous hearings that

the prosecution itself requested that the trial be discontinued in view of the insufficient precision with which the charges against the applicant had been formulated, which could have easily been remedied at an earlier time (see paragraphs 54 above). Finally, the Court notes that the applicant was not notified about the discontinuation of the proceedings in June 2000 (see paragraph 58 above).

85. Having regard to the foregoing, the Court concludes that the length of the proceedings failed to satisfy the reasonable-time requirement of Article 6 § 1 of the Convention. There has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

86. 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

87. The applicant claimed 20,000 euros (EUR) as compensation for the non-pecuniary damage she had sustained as a result of the excessive length of the two sets of criminal proceedings against her. She submitted that she had suffered uncertainty about her personal and professional life as a result of the inordinate length of the proceedings. Her professional reputation had suffered as well. Finally, she had had to endure limitations on her freedom of movement.

88. The Government did not comment.

89. The Court considers that the applicant must have sustained non-pecuniary damage on account of the excessive length of the two sets of criminal proceedings against her. However, it is of the view that her anxiety owing to the uncertainty of the outcome of these proceedings must have receded after 2000, when she was already aware that the limitation period for prosecuting her had expired. Ruling on an equitable basis, it awards her EUR 3,200, plus any tax that may be chargeable.

B. Costs and expenses

90. The applicant sought the reimbursement of 8,160 United States dollars (USD) in lawyer's fees for a total of one hundred and thirty-six hours of legal work at the rate of USD 60 per hour. She also claimed EUR 200 for postage, translation of documents, photocopying, telephone and office

supplies. She submitted a fees agreement with her lawyer and postal receipts.

91. The Government did not comment.

92. 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, regard being had to the information in its possession and the above criteria, and also noting that part of the applicant's complaints were declared inadmissible (see paragraph 6 above), the Court considers it reasonable to award the sum of EUR 1,000, plus any tax that may be chargeable.

C. Default interest

93. 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 on account of the length of the first set of criminal proceedings against the applicant;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the length of the second set 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 3,200 (three thousand two hundred euros) in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand 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 2 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President