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

FIFTH SECTION

CASE OF MERDZHANOV v. BULGARIA

(Application no. 69316/01)

JUDGMENT

STRASBOURG

22 May 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 Merdzhanov v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Volodymyr Butkevych,
Rait Maruste,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 69316/01) 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 Stoyan Hristov Merdzhanov, born in 1943 and living in Sofia ("the applicant"), on 3 April 2001.

2. The applicant was represented by Ms I. Loulcheva and Ms Z. Stefanova, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadzhova, of the Ministry of Justice.

3. On 8 December 2005 the Court decided to give notice of the application 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

4. In the 1970s and early 1980s the applicant worked as a journalist and senior inspector at the propaganda department of the Ministry of Internal Affairs.

A. The applicant's conviction and sentence

5. In 1982 the applicant left Bulgaria and settled first in Switzerland and then in the United States of America.

6. In 1983 the Sofia Military Court, whose judgment was upheld the same year by the Military Chamber of the Supreme Court, tried the applicant in his absence and convicted him of treason and espionage. He was sentenced to nineteen years' imprisonment and forfeiture of all his assets, and was stripped of his Sofia residence.

7. In 1987, following the applicant's return to Bulgaria in 1986, the General Assembly of the Criminal Chambers of the Supreme Court set these judgments aside and the remitted the case for a fresh examination. In 1988 the Sofia Military Court, whose judgment was upheld the same year by the Military Chamber of the Supreme Court, re-convicted the applicant of treason and espionage, and sentenced him to sixteen years' imprisonment. It also deprived him of the right to reside in Sofia and forfeited all his assets. The applicant was kept in custody between April 1986 and December 1989.

8. In April 1990 the General Assembly of the Criminal Chambers of the Supreme Court set the above judgments aside and acquitted the applicant.

B. The proceedings under the 1988 State Responsibility for Damage Act

1. The proceedings before the Sofia City Court

9. On 14 May 1990 the applicant filed an action under the 1988 State Responsibility for Damage Act (see paragraph 28 below). He named as defendants the Ministry of Internal Affairs, the General Investigation Service, the Sofia Regional Military Prosecutor's Office, the Supreme Military Prosecutor's Office, the Sofia Military Court, the Supreme Court, the Sofia Prison and the Sredetz Municipal Council, all of which had allegedly participated in various ways in the repression against him. He claimed compensation for the pecuniary (including lost pay, lawyers' fees, the value of the confiscated chattels and flat, and the loss of enjoyment of these properties) and the non-pecuniary damage suffered as a result of the criminal proceedings against him, the confiscation of his property and his detention.

10. The Sofia City Court examined the case in twenty-one hearings, held between September 1990 and March 1994 at one- to three-month intervals. Thirteen of them took place before 7 September 1992 – the date on which the Convention entered into force in respect of Bulgaria.

11. In examining the case the court heard a number of witnesses and several experts who drew up reports on the value of the flat and the chattels confiscated from the applicant. At the request of the applicant, some of the

reports were updated to take account of the increase of the price of the flat and of the chattels due to the high inflation in the country between 1990 and 1994. The applicant removed or added defendants on five occasions. At the close of the proceedings the defendants were the Supreme Court, the Chief Prosecutor's Office, and the Ministries of Justice, Finance and Defence. He also twice increased the value of his claims. On two occasions the court instructed him to itemise and specify his claims with regard to each defendant.

12. Nine hearings (five before 7 September 1992 and four after that date) were adjourned owing to various problems attributable to the authorities, such as the failure to properly summon or serve documents on defendants, or to obtain expert reports in time.

13. One hearing, listed for 15 February 1993, was adjourned because the applicant's lawyer was on strike. On two occasions in March 1992 and May 1993 the case was also adjourned to allow the drawing up of additional expert reports requested by the applicant.

14. In a judgment of 23 January 1995 the Sofia City Court partly allowed the applicant's claims against the Supreme Court and the Chief Prosecutor's Office, holding, *inter alia*, that they were liable, both directly and in lieu of their subordinate entities (the Sofia Military Court and the Sofia Regional Military Prosecutor's Office), for the damage suffered by the applicant. The court dismissed the claims against the other defendants, holding that they were not the properly answerable State entities. The judgment was not appealed against and entered into force.

2. The review proceedings before the Supreme Court

15. On 28 May 1996 the Chief Prosecutor petitioned the Supreme Court to review the Sofia City Court's judgment.

16. On 2 December 1996 the Supreme Court set the judgment aside and remitted the case for a fresh examination. It held that the Sofia City Court had failed to identify the proper defendants to the applicant's action. In the court's view, the State entity answerable for the damage stemming from the actions of the Sofia Regional Military Prosecutor's Office, the Sofia Military Court and the Military Chamber of the Supreme Court was the Ministry of Defence, from whose budget they were being financed.

3. The second examination of the case by the Sofia City Court

17. During the second examination of the case, which began in November 1997 and ended in February 2003, the Sofia City Court held eighteen hearings. The intervals between them ranged between three and seven months. The court admitted in evidence three expert reports. At the start of the proceedings the defendants were the Supreme Court, the Chief Prosecutor's Office and the Ministries of Justice and Defence.

18. Eleven hearings were adjourned because of various problems attributable to the authorities, such as the failure to properly summon or serve documents on defendants, or to obtain expert reports in time.

19. The applicant was responsible for the adjournment of three hearings: one because he was in hospital and could not attend, and two others because he requested expert reports. On four occasions he changed defendants, as some of them had ceased to exist and had been succeeded by other entities, and as apparently he decided that the two Ministries were not liable.

20. In a judgment of 14 April 2003 the Sofia City Court partly allowed and partly dismissed the applicant's claims against the Supreme Court of Cassation, the Sofia Military Court, the Special Investigation Service and the Prosecutor's Office. It also noted, *inter alia*, that the Supreme Court's earlier holding concerning the Ministry of Defence's liability for the actions of the military courts and prosecution offices (see paragraph 16 above) was no longer apposite, as following legislative amendments these entities were presently financed from the judiciary budget.

4. The proceedings before the Sofia Court of Appeals

21. Both the applicant and the Sofia City Prosecutor's Office appealed. The applicant requested four expert reports on the value of his confiscated properties and another report on the amount of interest due.

22. The Sofia Court of Appeals examined the case in six hearings, which took place between April 2004 and January 2006 at approximately four- to five-month intervals. One of them was adjourned as one of the defendants had not been duly summoned.

23. After allowing an increase of the applicant's claims and, despite its initial reluctance, ordering four expert reports requested by the applicant, in January 2005 the court annulled these actions and decided to start the proceedings anew, as it noted that it had mistakenly summoned as a defendant the Special Investigation Service instead of the National Investigation Service, which had succeeded it in 2002.

24. In a judgment of 28 March 2006 the Sofia Court of Appeals quashed the Sofia City Court's judgment, and partly allowed the applicant's claims against the Prosecutor's Office, the National Investigation Service, the Sofia Military Court and the Supreme Court of Cassation. It also held that the entity liable for the damage arising from the confiscation of the applicant's property was the State and not any of the above authorities, and accordingly ordered it to pay the applicant compensation.

5. The proceedings before the Supreme Court of Cassation

25. The applicant, the Prosecutor's Office and the State, represented by the Ministry of Finance, appealed on points of law.

26. After holding a hearing on 4 June 2007, on 20 July 2007 the Supreme Court of Cassation partly upheld the Sofia Court of Appeals' judgment, partly reversed it, increasing the amount of non-pecuniary damages awarded to the applicant, and partly quashed it, remitting the part of the case relating to the quashed part of the judgment to the Sofia City Court. It held, *inter alia*, that by ordering the State to pay damages to the applicant the lower court had ruled on a claim which had not been properly brought before it. The State had not been named as a defendant and had not been party to the proceedings. The court further held that the applicant had erred by claiming compensation for the damage arising from the confiscation from the National Investigation Service, the Prosecutor's Office, the Sofia Military Court and the Supreme Court of Cassation. They were not liable, the proper defendant to such claims being the State itself. The court also criticised the lower courts for not clearly identifying the different claims in the operative provisions of their judgments and for failing to clarify the procedural position of the Ministry of Finance.

6. The third examination of the case by the Sofia City Court

27. At the time of the latest information from the parties, 4 September 2007, the proceedings were once more pending before the Sofia City Court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. The statute regulating tort claims against the State is the 1988 State Responsibility for Damage Caused to Citizens Act („Закон за отговорността на държавата за вреди, причинени на граждани“ – this was the original title; on 12 July 2006 it was changed to the State and Municipalities Responsibility for Damage Act, „Закон за отговорността на държавата и общините за вреди“). Its section 1 regulates the liability of the administrative authorities and section 2 regulates the liability of the courts and of the investigation and the prosecution authorities. Section 7 provides that an action for compensation has to be brought against the authorities whose unlawful decisions, actions or omissions have caused the damage. In a binding interpretative decision (тълк. реш. № 3 от 22 април 2004 г. на ВКС по тълк.д. № 3/2004 г., ОСГК) made on 22 April 2004 the Plenary Meeting of the Civil Chambers of the Supreme Court of Cassation resolved a number of contentious issues relating to the construction of various provisions of the Act and in particular clarified the proper defendants to tort actions for various forms of official misconduct.

THE LAW

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

29. The applicant alleged that the length of the proceedings under the 1988 State Responsibility for Damage Act was in breach of Article 6 § 1 of the Convention, which reads, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

A. Admissibility

30. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

31. The period to be taken into consideration did not begin to run on 14 May 1990, when the applicant filed his action (see paragraph 9 above), but on 7 September 1992, when the Convention entered into force in respect of Bulgaria. However, to determine whether the time which has elapsed following this date is reasonable, it is necessary to take account of the stage which the proceedings had reached at that point (see, among other authorities, *Rachevi v. Bulgaria*, no. 47877/99, § 70, 23 September 2004). On 7 September 1992 the proceedings had been pending for about two years and five months and the case was being examined by the first-instance court.

32. At the time of the latest information from the parties, 4 September 2007, the case was pending for a third time before Sofia City Court (see paragraph 27 above). The time which has elapsed since the filing of the applicant's action has thus been more than seventeen years, of which at least fifteen years after 7 September 1992. However, in determining the duration of the period to be taken into consideration the Court must discount the time between January 1995, when the Sofia City Court gave its first judgment in the case, and December 1996, when the Supreme Court decided to set this judgment aside and reopen the proceedings (see paragraphs 14 and 16 above). This is because in length-of-proceedings cases the Court takes into account only periods when the litigation was actually pending before the courts, that is, when there was no effective judgment determining the merits of the dispute and when the courts were under an obligation to pass such a judgment. These do not include periods when a judgment has been in force

before being set aside in review proceedings, or periods when the domestic courts decide whether or not to reopen a case (see, among others, *Yaroslavtsev v. Russia*, no. 42138/02, § 22, 2 December 2004; *Pavlyulynets v. Ukraine*, no. 70767/01, § 41, 6 September 2005; and *Aliuță v. Romania*, no. 73502/01, § 16, 11 July 2006). The period to be taken into account is therefore a little over thirteen years for three levels of court.

33. 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, and what was at stake for the applicant in the litigation (see, among many other authorities, *Rachevi*, cited above, § 73).

34. The parties presented detailed arguments as to the way in which these criteria should apply in the instant case.

35. The Court considers that the litigation was not particularly complex legally, but had a certain degree of factual and procedural complexity, as the applicant sought damages from several entities, most of which had been re-organised following the political and administrative changes in Bulgaria after 1989, and his claims concerned various heads of damage, some of which required expert evidence. However, these features cannot in themselves account for the length of the proceedings.

36. While the case did not concern the applicant's livelihood or another extremely pressing matter, its subject-matter – obtaining compensation for sweeping repressions endured during the communist regime – seems to have been of some importance to him.

37. The Court observes that the applicant contributed, at least to a certain extent, to the length of the proceedings. His and his lawyer's absence caused the adjournment of two hearings (see paragraphs 13 and 19 above). He also changed defendants nine times, increased his claims on four occasions and requested additional expert reports (see paragraphs 11, 13, 19 and 23 above). These inevitably rendered the proceedings more complicated and caused further adjournments.

38. However, the Court is not persuaded that the responsibility for the ensuing delays rested entirely with the applicant. As regards the changes of defendants, it appears that from the outset of the litigation there was some uncertainty as to which State entities were the proper defendants to the applicant's action. Indeed, this was a matter on which all levels of court parted opinion (see paragraphs 14, 16, 20, 24 and 26 above). It seems that this confusion was due, on the one hand, to the changes in the State's administrative structure after 1989, which was an objective factor, and, on the other, to the persistently unclear regulation of the issue which entities were liable for various forms of alleged official misconduct (see paragraph 28 above). In a legal system governed by the rule of law, the identity of the State entities responsible for different sectors of activity and designated to

answer civil claims must be transparent and easily accessible (see *Dodov v. Bulgaria*, no. 59548/00, § 113 *in fine*, ECHR 2008-...).

39. Nor can the applicant be blamed for increasing his claims and requesting updated expert reports, even though by so doing he may have prolonged the proceedings. These were procedural devices whereby he tried to prevent the erosion of the value of his claims as a result of the high inflation (see *Rachevi*, cited above, § 81 *in fine*, with further references).

40. Concerning the delays brought about by the authorities, the Court observes that the main reasons – all attributable to them – for the duration of the proceedings are three: (i) the inability of various levels of court to identify clearly the entities liable for the different heads of damage sustained by the applicant (see paragraphs 14, 16, 20, 24 and 26 above), (ii) the high number of hearings held by the Sofia City Court during both its initial and its second examination of the case, and by the Sofia Court of Appeals (see paragraphs 10, 17 and 22 above), and (iii) the numerous adjournments, most often due to the Sofia City Court's failure to duly summon defendants and obtain expert reports in time (see paragraphs 12 and 18 above).

41. As regards the first of these factors, the Court refers to its findings in paragraph 38 above. Concerning the second, it finds that, while the multiplicity of the applicant's claims may have prompted more hearings than a run-of-the-mill civil action, it appears that the number of hearings was for the most part due to the courts' failure to properly manage the processing of the case. For instance, in January 2005 the proceedings before the Sofia Court of Appeals had to be started anew due to a simple procedural mistake which could have been spotted from the outset (see paragraph 23 above). The number of adjournments due to failures to summon defendants is also striking, seeing that all of them were State entities whose addresses should have been readily available to the courts and on whom it should not have been problematic to serve process (see, *mutatis mutandis*, *Dodov*, cited above, § 113 *in limine*). The responsibility for the late production of expert reports may also be considered to lie with the authorities (see *Rachevi*, cited above, § 90, with further references).

42. To the delays identified above should be added those flowing from the increasingly lengthy intervals between the hearings scheduled by the Sofia City Court; while at first these intervals were ranging from one to three months, later they were stretching from three to seven months (see paragraphs 10 and 17 above). It is also noteworthy that when first examining the applicant's action, this court gave judgment some nine months after the case had been ready for decision. Finally, the Court observes that the Sofia City Court started examining the case for a second time some eleven months after its first judgment had been set aside by the Supreme Court, and the Sofia Court of Appeals started examining the case

about a year after the second judgment of the Sofia City Court (see paragraphs 16, 17, 20 and 22 above).

43. Having regard to the foregoing, the Court finds that the applicant's case was not determined within a "reasonable time", in breach of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 30,000 euros (EUR) in respect of the non-pecuniary damage sustained on account of the excessive length of the proceedings.

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

47. The Court considers that the applicant must have sustained distress and frustration as a result of the breach of Article 6 § 1. Ruling on an equitable basis, as required under Article 41, it awards him EUR 7,000, plus any tax that may be chargeable.

B. Costs and expenses

48. The applicant sought the reimbursement of EUR 2,400 incurred in lawyers' fees in the domestic proceedings and EUR 7,800 in fees for the proceedings before the Court. He further claimed EUR 180 in translation and office expenses and postage. He submitted a fees' agreement with his lawyer, translation contracts, payment documents and invoices.

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

50. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. The lawyers' fees claimed in respect of the domestic proceedings concern the applicant's representation in these proceedings. They do not therefore constitute expenses necessarily incurred in seeking redress for the violation of the Convention found in the present case (see *Kiurkchian v. Bulgaria*, no. 44626/98, § 81, 24 March 2005, with further references). As regards the amounts claimed in respect of the Strasbourg proceedings, having regard to the information in its possession

and the above criteria, the Court considers it reasonable to award the sum of EUR 1,200, plus any tax that may be chargeable to the applicant.

C. Default interest

51. 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*
   (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 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,200 (one thousand two 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;

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

Done in English, and notified in writing on 22 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President