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

FIFTH SECTION

CASE OF SHEREMETOV v. BULGARIA

(Application no. 16880/02)

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 Sheremetov 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 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 16880/02) 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 a Bulgarian national, Mr Nikolai Dimitrov Sheremetov, born in 1960 and living in Sofia ("the applicant"), on 16 April 2002.

2. The applicant was represented by Ms Z. Stefanova, a lawyer 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. Under Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. In 1992 the applicant was working for a pharmaceuticals company.

5. In March 1992 the Elin Pelin Investigation Service opened a preliminary investigation into the attempted theft of ten barrels of chemicals from the company premises. In April and May 1992 the applicant and two other employees were charged.

6. On 2 July 1992 the investigator finished his work on the case and sent the file to the Elin Pelin District Prosecutor's Office. On 15 July 1992 that Office dropped the charges against the applicant's co-accused and on 24 July 1992 indicted the applicant.

7. At a hearing held on 27 October 1992 the Elin Pelin District Court found indications that the applicant's co-accused might have been involved in the commission of the offence and referred the case back for further investigation.

8. Following additional inquiries, on 23 March 1993 the investigator charged the applicant and the two other employees anew and on 31 March 1993 sent the file to the Elin Pelin District Prosecutor's Office.

9. On 3 May 1993 the Elin Pelin District Prosecutor's Office again dropped the charges against the applicant's co-accused. Upon the appeal of the applicant, on 7 June 1993 the Sofia Regional Prosecutor's Office confirmed this decision. Upon the applicant's further appeal, on 9 August 1993 the Chief Prosecutor's Office found that the facts of the case had not been sufficiently elucidated, quashed the decision and referred the case back for further investigation.

10. Following an additional investigation, in December 1993 the applicant and the two other employees were charged anew and in January 1994 the file was sent to the Elin Pelin District Prosecutor's Office.

11. On 3 February 1994 the Elin Pelin District Prosecutor's Office referred the case back to the investigator, finding that the facts had not been sufficiently elucidated and that the applicant and one of his co-accused had been questioned in the absence of their counsel.

12. After addressing these omissions, on 7 March 1994 the investigator sent the file to the Elin Pelin District Prosecutor's Office.

13. On 14 March 1994 the Elin Pelin District Prosecutor's Office dropped the charges against the applicant's co-accused and on 27 June 1994 indicted the applicant.

14. The Elin Pelin District Court examined the case in six hearings which took place between October 1994 and November 1995. It heard a number of witnesses. Three of the hearings were adjourned because certain witnesses, despite being duly subpoenaed, failed to appear. One hearing failed to take place because the prosecutor was absent and one was adjourned to allow the applicant to call additional witnesses.

15. In a judgment of 30 November 1995 the Elin Pelin District Court found the applicant guilty and sentenced him to one year and three months' imprisonment, suspended.

16. Both the applicant and the prosecution appealed.

17. The Sofia Regional Court, after adjourning one hearing upon the request of the applicant's counsel, who had not had enough time to prepare due to the late arrival of the file in the court's registry, examined the appeal at a hearing held on 26 February 1996.

18. On 27 February 1996 the Sofia Regional Court quashed the lower court's judgment and remitted the case to the preliminary investigation stage. It found that the lower court had failed to apprise the applicant of his rights to defend himself and to request the recusal of the judges. It also found that the value of the chemicals had not been assessed by an expert and that the lower court's findings of fact had not been sufficiently supported by the evidence.

19. Following additional inquiries, on 15 May 1996 the applicant was charged anew and the file was sent to the Elin Pelin District Prosecutor's Office. On 8 July 1996 that Office found that the facts had not been sufficiently elucidated and referred the case back to the investigator.

20. On an unspecified date the investigator sent the file to the Elin Pelin District Prosecutor's Office without having carried out any investigative steps. Accordingly, on 10 October 1996 that Office referred it back.

21. Following a few additional inquiries, on 8 June 1999 the investigator sent the file to the Elin Pelin District Prosecutor's Office with a proposal to drop the charges against the applicant. Finding that its instructions had not been complied with, on 4 October 1999 that Office once more referred the case back to the investigator.

22. After questioning five witnesses between October 1999 July 2000, on 18 July 2000 the investigator sent the file to the Elin Pelin District Prosecutor's Office. After partially reformulating the charges against the applicant on 29 November 2000, on 15 January 2000 that Office again referred the case back to the investigator with instructions to clarify certain aspects of the commission of the offence.

23. On 26 February 2001 the applicant was charged anew. On 28 February 2001 the file was sent to the Elin Pelin District Prosecutor's Office, which indicted the applicant on 21 June 2001.

24. The Elin Pelin District Court examined the case in six hearings which took place between September 2001 and June 2002. It heard a number of witnesses and one expert. Three of the hearings were adjourned because of the absence of witnesses who had not been duly subpoenaed. One hearing was adjourned because the applicant had not been summoned and consequently did not appear. One of the adjournments was also due to the applicant's request to call additional witnesses.

25. In a judgment of 10 June 2002 the Elin Pelin District Court found the applicant guilty. It sentenced him to three months' imprisonment, suspended – below the statutory minimum. In determining the sentence it took into account the applicant's lack of prior convictions, the lack of information that he was of bad character, the long lapse of time between the commission of the offence and the handing down of the court's judgment, and the fact that the offence had remained inchoate.

26. The applicant appealed.

27. After holding a hearing on 28 October 2002, on 11 November 2002 the Sofia Regional Court upheld the conviction and sentence, with one slight modification relating to the legal characterisation of the offence.

28. The applicant appealed on points of law.

29. After holding a hearing on 17 March 2003, on 31 March 2003 the Supreme Court of Cassation upheld the lower court's judgment.

THE LAW

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

30. The applicant alleged that the proceedings against him had lasted unreasonably long, in breach of Article 6 § 1 of the Convention, which provides, in so far 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. Admissibility

31. The Government pointed out that the Elin Pelin District Court had acknowledged the lengthy period that had elapsed between the commission of the applicant's offence and the handing down of its judgment, and had accordingly reduced his sentence below the statutory minimum. In their view, in these circumstances the applicant could no longer claim to be a victim of a violation of his right to a trial within a reasonable time.

32. The applicant disagreed, saying that while the trial court had indeed reduced his sentence, the long lapse of time between the commission of the offence and the handing down of its judgment had been but one factor in this regard. The mere noting of the excessive duration of proceedings could not make good the damage suffered by him on that account. Furthermore, there was no avenue in Bulgarian law allowing compensation to be sought for the inordinate length of criminal proceedings.

33. According to the Court's case-law, mitigation of sentence alone does not in principle remedy a failure to comply with the reasonable time requirement of Article 6 § 1 of the Convention with regard to criminal proceedings. However, this general rule might be subject to an exception when the national authorities have acknowledged either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Mladenov v. Bulgaria*, no. 58775/00, § 31, 12 October 2006, citing further authorities).

34. In the instant case, the trial court took note of the long gap between the commission of the offence and the adoption of its judgment, and took it into account in reducing the applicant's sentence below the statutory minimum (see paragraph 25 above). However, that court did not make reference to Article 6 § 1 of the Convention. Nor did it say, implicitly or explicitly, that this lapse of time had been due, wholly or in part, to the excessive length of the proceedings. In these circumstances, the Court does not consider that the national authorities have recognised, expressly or in substance, a breach of Article 6 § 1 on account of the length of the proceedings. It is furthermore not persuaded that the authorities afforded adequate redress by reducing the applicant's sentence in an express and measurable manner, as it is unclear what part of the reduction was due to the belated determination of the charges against him and what part – to other mitigating factors (ibid., § 32, with further references).

35. In these circumstances, the applicant cannot be considered as having lost his victim status under Article 34 of the Convention. The Government's objection must therefore be dismissed.

36. The Court further considers that the 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

37. The period to be taken into consideration did not begin to run in March 1992, when the proceedings were instituted, or in May 1992, when the applicant was charged, but only 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).

38. The period ended on 31 March 2003 with the delivery of the Supreme Court of Cassation's judgment. It thus lasted a little over ten and a half years.

39. The reasonableness of the length of the proceedings must be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities (see, among many other authorities, *Vachev v. Bulgaria*, no. 42987/98, § 85, 8 July 2004).

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

41. The Court does not consider that the case was particularly complex in fact or in law, even though at times it involved three accused.

42. The applicant was responsible for the adjournment of three hearings, which resulted in a delay of several months (see paragraphs 14, 17 and 24 above).

43. As far as the conduct of the authorities is concerned, the Court observes that the major source of delay was the fact that the case was referred back for additional investigation and rectification of omissions on seven occasions (see paragraphs 7, 9, 11, 19, 20, 21 and 22 above). This was apparently due to the poor coordination between the prosecution and the investigation authorities (see *Vachev*, cited above, § 96). In addition, it seems that for a period of more than two and a half years, between October 1996 and June 1999, the investigation had almost ground to a halt (see paragraph 20 and 21 above). As a result, the preliminary investigation stage alone spanned almost seven years. In view of the relatively uncomplicated nature of the case, such a time-span appears excessive. Moreover, four hearings before the Elin Pelin District Court were adjourned owning to reasons attributable to the authorities (see paragraphs 14 and 24 above).

44. While in 2002-03 the Sofia Regional Court and the Supreme Court of Cassation examined the case in a swift manner (see paragraphs 27 and 29 above), this did not compensate the delays which had accumulated earlier.

45. Having regard to the delays identified above and the global duration of the proceedings, the Court concludes that the charges against the applicant were not determined within a "reasonable time", in breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant alleged that he had not had any remedies in respect of the excessive length of the criminal proceedings against him. He relied on Article 13 of the Convention, which provides:

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

A. The parties' submissions

47. The Government submitted that, although the applicant had not raised any complaints about the length of the proceedings, the trial court had taken it into account in reducing his sentence below the statutory minimum. It had thus provided him adequate redress.

48. The applicant replied that despite the trial court's holding, he had not had an effective remedy in respect of the length of the proceedings.

B. The Court's assessment

49. 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.

50. Article 13 of the Convention guarantees an effective remedy before a national authority in respect of an arguable complaint of a breach of the requirement of Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, §§ 146-57, ECHR 2000-XI).

51. Having regard to its conclusion in paragraph 45 above, the Court is satisfied that the applicant's complaint was arguable.

52. In several cases against Bulgaria the Court found that at the relevant time no formal remedy existed under Bulgarian law whereby an accused could have expedited the determination of the criminal charges against him (see *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, §§ 38-40, 23 September 2004; *Sidjimov v. Bulgaria*, no. 55057/00, § 41, 27 January 2005; and *Nalbantova v. Bulgaria*, no. 38106/02, § 34, 27 September 2007). It sees no reason to reach a different conclusion in the present case.

53. As regards compensatory remedies, the Court has not found it established that under Bulgarian law there exists an avenue whereby an applicant could obtain damages or other redress for excessively lengthy criminal proceedings (see *Osmanov and Yuseinov*, § 41; *Sidjimov*, § 42; and *Nalbantova*, § 35, all cited above; see also *Staykov v. Bulgaria*, no. 49438/99, § 89 *in fine*, 12 October 2006).

54. There has therefore been a violation of Article 13 of the Convention in this respect.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

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

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

58. The Court considers that the applicant must have endured anguish and frustration as a result of the excessive length of the proceedings against him. However, it observes that in fixing the applicant's sentence the

domestic courts reduced his sentence due to, among others, the belated determination of the charges against him. Even though this is not enough to deprive the applicant of his victim status (see paragraphs 33-35 above), it must be taken into consideration by the Court for the purpose of assessing the extent of the damage suffered by him (see *Mladenov*, cited above, § 52, citing further authorities). Having regard to this and ruling on an equitable basis, as required under Article 41 of the Convention, the Court awards the applicant EUR 3,000, plus any tax that may be chargeable.

B. Costs and expenses

59. The applicant sought the reimbursement of EUR 1,800 incurred in lawyers' fees in the domestic proceedings and EUR 5,760 in fees for the proceedings before the Court. He further claimed EUR 420 in translation and office expenses and postage. He submitted a fees' agreement with his lawyer, translation contracts, payment documents and invoices.

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

61. 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 1,000, plus any tax that may be chargeable to the applicant.

C. Default interest

62. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's 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
Registrar

Peer Lorenzen
President