FIFTH SECTION

# CASE OF VALENTIN IVANOV v. BULGARIA

*(Application no. 76942/01)*

JUDGMENT

STRASBOURG

26 March 2009

*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 Valentin Ivanov v. Bulgaria,**

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 3 March 2009,

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

# PROCEDURE

1. The case originated in an application (no. 76942/01) dated 21 December 2000 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 Valentin Petrov Ivanov, who was born in 1969 and lives in Sofia ("the applicant").

2. The applicant was represented by Ms Y. Vandova, a lawyer practising in Sofia.

3. The Bulgarian Government ("the Government") were represented by their Agents, Ms M. Kotzeva and Ms M. Dimova, of the Ministry of Justice.

4. On 5 January 2006 the Court declared the application partly inadmissible and decided to communicate the complaints concerning the length of the proceedings and the lack of remedies in that respect to the Government. It also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

5. On 1 May 2008 the new judge elected in respect of the Republic of Bulgaria, Ms Zdravka Kalaydjieva, began her term of office. She subsequently withdrew from the present case and the President of the Chamber exempted her from sitting in it.

6. On 16 September 2008 a Chamber, constituted within the Fifth Section and composed of Peer Lorenzen, *President*, Rait Maruste, Karel Jungwiert, Volodymyr Butkevych, Renate Jaeger, Isabelle Berro-Lefèvre and Mirjana Lazarova Trajkovska, *judges*, adopted a judgment in the case where it found a violation of Articles 6 and 13 of the Convention (excessive length of criminal proceedings and lack of effective remedies), which was delivered on 9 October 2008. However, the Chamber which adopted the

judgment was not constituted in compliance with Article 27 § 2 of the Convention because no national judge had participated.

7. On 23 October 2008 the Registry informed the parties. In a letter of 13 November 2008 the applicant requested to have the proceedings reopened and a new judgment adopted.

8. On 25 November 2008 the Court reopened the proceedings and invited the Government to appoint an *ad hoc* judge.

9. On 10 January 2009 the Government informed the Court that they designated the judge elected in respect of "the former Yugoslav Republic of Macedonia", Mrs Mirijana Lazarova Trajkovska, to sit as national judge in the case.

# THE FACTS

## THE CIRCUMSTANCES OF THE CASE

10. On the night of 21 April 1992 two persons, who worked as bodyguards for the applicant's former father-in-law, were murdered. A preliminary investigation was opened on an unspecified date.

11. The applicant's former father-in-law was detained and questioned on an unspecified date. He confessed to the two homicides and implicated the applicant as an accomplice.

12. The applicant was detained and questioned on 4 and 5 May 1992. He confessed to having assisted his former father-in-law in planning, committing and concealing the two murders. The applicant was then remanded in custody and charged.

13. Thereafter the authorities conducted a preliminary investigation which involved, *inter alia*, the questioning of almost two hundred and fifty witnesses in different cities, performing a number of crime scene experiments and commissioning the following reports: autopsy, physical-chemical, forensic, ballistic, medico-ballistic, psychiatric, graphological, and accounting. An assessor's report was also prepared.

14. The preliminary investigation ended in August 1994.

15. On 17 March 1995 an indictment was filed against the applicant and his co-defendant. The applicant was charged with (a) premeditated aggravated murder; (b) acquiring and retaining significant amounts of money obtained through fraudulent means; and (c) obtaining and possessing a handgun and ammunition without a permit.

16. On 21 June 1995 the charges against the applicant were amended, which led to the initial indictment being withdrawn on an unspecified date and a revised indictment being filed on 11 July 1995.

17. It is unclear on which dates and how many hearings were conducted before the Sofia City Court.

18. On 15 November 1996 the Sofia City Court remitted the case back to the public prosecutor's office. The applicant contended, which the Government did not expressly challenge, that this was because of procedural violations but that no additional investigative procedures had been conducted as a result.

19. A new indictment was filed against the applicant on 1 July 1997.

20. On an unspecified date the victims' relatives joined the proceedings as civil claimants.

21. It is unclear when and how many hearings were conducted before the Sofia City Court.

22. In a judgment of 11 June 1999 the Sofia City Court found the applicant guilty of (a) premeditated aggravated murder; (b) acquiring and retaining money obtained through fraudulent means; and (c) obtaining and possessing a handgun and ammunition without a permit. The applicant's co-defendant was also found guilty of related charges. The court sentenced the applicant to life imprisonment without the possibility of parole and awarded damages to the victims' successors.

23. On 9 July 1999 the applicant appealed against the judgment of the Sofia City Court. It is unclear on which dates and how many hearings were conducted before the Supreme Court of Appeal.

24. In a judgment of 18 April 2000 the Supreme Court of Appeal dismissed the applicant's appeal and upheld the lower court's judgment in its entirety.

25. On 26 April 2000 the applicant filed a cassation appeal. In a final judgment of 3 November 2000 the Supreme Court of Cassation dismissed the applicant's appeal, but reduced the imposed sentence to life imprisonment.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

26. The applicant complained that the length of the criminal proceedings against him was incompatible with the “reasonable time” requirement, laid down in Article 6 § 1 of the Convention, and that he lacked effective remedies in that respect.

The relevant part of Article 6 § 1 of the Convention provides as follows:

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

Article 13 of the Convention provides as follows:

> "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."

27. The Government contested that argument. They argued that the case was very complex and that it had required the collection of such a multitude of evidence – witness statements, reports and various other pieces of written evidence – that the length of the proceedings could not be considered to have been excessive in this instance. The Government further claimed that the domestic case consisted of sixty four volumes of documents and that during the period in question there had been a reform of the judiciary which had also had an influence on the length. They did not present any copies of minutes of hearings or any other documentary evidence in support of their assertions.

### A. Period to be taken into consideration

28. The Court considers that the criminal proceedings commenced in respect of the applicant on 4 May 1992 when he was first detained and questioned. However, the period which falls within its jurisdiction did not begin on that date, but on 7 September 1992, when the Convention entered into force in respect of Bulgaria. The proceedings ended on 3 November 2000 with the final judgment of the Supreme Court of Cassation. Thus, the length of the proceedings which falls within the Court's competence *ratione temporis* is eight years, one month and twenty eight days for a preliminary investigation and three levels of court.

### B. Admissibility

29. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### C. Merits

#### *1. Complaint under Article 6 § 1 of the Convention regarding the alleged excessive length of the criminal proceedings*

30. The Court observes 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 applicant and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II)

31. 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, most recently, *Atanasov and Ovcharov v. Bulgaria*, no. 61596/00, §§ 43-61, 17 January 2008 and *Nalbantova v. Bulgaria*, no. 38106/02, §§ 23-36, 27 September 2007).

32. Having examined all the material before it, the Court finds that no facts or arguments capable of persuading it that the length of the criminal proceedings in the present case was reasonable have been put forward. In particular, while noting that the case was somewhat complex and involved the collection of a multitude of evidence, it is unclear on which dates and how many hearings were conducted before the domestic courts, whether they were scheduled within a reasonable amount of time and whether the said courts diligently managed the proceedings before them so as to conform to the reasonable time requirement under Article 6 of the Convention. In addition, on two occasions the authorities had to file new indictments against the applicant as a result of an amendment to the charges against him and the remittal of the case to the public prosecutor's office, which in itself lengthened the proceedings by at least two years.

33. Thus, having regard to the above and to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1 of the Convention.

*2. Complaint under Article 13 in conjunction with Article 6 § 1 of the Convention regarding the alleged lack of effective remedies*

34. The Court reiterates that Article 13 of the Convention guarantees the availability at national level of a remedy to deal with the substance of an "arguable complaint" under the Convention and to grant appropriate relief (see *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI). In the present case, having regard to its conclusion with regard to the excessive length of the proceedings, the Court considers that the applicant had an arguable claim of violation of article 6 § 1.

35. 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*, cited above, § 158).

36. The Court notes that in similar cases against Bulgaria it has found that at the relevant time there was no formal remedy under Bulgarian law that could have prevented the alleged violation or its continuation, or

provided adequate redress for any violation that had already occurred (see *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, §§ 31-42, 23 September 2004; *Sidjimov v. Bulgaria*, no. 55057/00, §§ 37-43, 27 January 2005; *Atanasov and Ovcharov*, cited above, §§ 55-61; and *Nalbantova*, cited above, §§ 32-36). The Court sees no reason to reach a different conclusion in the present case.

37. Accordingly, there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, on account of the lack of an effective remedy for the excessive length of the criminal proceedings.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 50,000 euros (EUR) as compensation for the non-pecuniary damage which arose from the violation of his rights under the Convention.

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

41. The Court considers that the applicant has suffered non-pecuniary damage as a result of the protraction of the criminal proceedings against him for over eight years. Having regard to its case-law in similar cases and deciding on an equitable basis, the Court awards EUR 600 under this head, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

42. The applicant also claimed EUR 1,500 for the legal work carried out by his lawyer and EUR 200 for postal expenses. No supporting documents were presented.

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

44. 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 were actually and necessarily incurred and were reasonable as to quantum. In the present case, the Court notes that the applicant's claim is not supported by any evidence, such as a legal fee agreement, timesheet or receipts. It must therefore be rejected as unsubstantiated.

### C. Default interest

45. 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 remainder of 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 applicant;

3. *Holds* that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, on account of the lack of an effective remedy for the excessive length of the criminal proceedings;

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, EUR 600 (six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement;
   (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 26 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Stephen Phillips | Peer Lorenzen |
| Deputy Registrar | President |