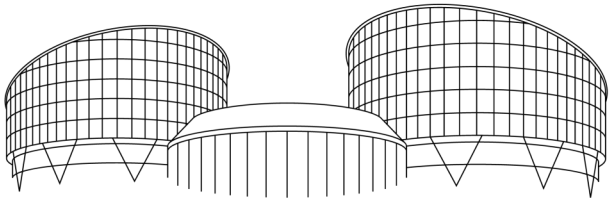

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF YANKOV AND OTHERS v. BULGARIA

(Application no. 4570/05)

JUDGMENT

STRASBOURG

23 September 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Yankov and Others v. Bulgaria,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 31 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 4570/05) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by five Bulgarian nationals, Mr Hristo Yankov Yankov ("the first applicant"), Mr Rangel Rangelov Yankov ("the second applicant"), Mrs Ginka Andonova Yankova ("the third applicant"), Mrs Zapryana Angelova Gogova ("the fourth applicant") and Mr Manol Zlatanov Gogov ("the fifth applicant"), on 21 January 2005. The second and third applicants are spouses. So are the fourth and fifth applicants.

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

3. On 11 March 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (former Article 29 § 3).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicants were born in 1966, 1947, 1947, 1972 and 1968 respectively and live in the village of Stryama near Plovdiv.

5. On 24 August 1993 the second, third, fourth and fifth applicants and the son of the second and third applicants, Mr R.R., were caught by the police when attempting to transport stolen fruit. The police officers ordered the second applicant who was driving the cart with the stolen goods to bring the goods to the police station. He did not comply and drove the cart away. The remaining applicants and Mr R.R. went home.

6. On 27 August 1993 the third and fourth applicants and Mr R.R. were questioned in connection to the theft, admitted to it and stated that the fifth applicant had also participated in the theft. The second applicant was questioned and confessed to the offence on 2 September 1993.

7. Apparently these questionings were carried within the framework of police investigation (дознание) no. 582/93.

8. On 20 September 1993 a police officer from the Rakovski district police department proposed to the prosecution authorities to initiate preliminary investigation (предварително производство) for theft against the second, third, fourth and fifth applicants and Mr R.R. He stated in his report that the fifth applicant had not been questioned as he was hiding.

9. Thereafter the case remained dormant until January 2002.

10. On 3 January 2002 a witness was questioned and on 27 January an expert opinion was commissioned.

11. On 29 January 2002 the second, third, fourth and fifth applicants and Mr R.R. were questioned as suspects (уличени) under police investigation no. 582/93 and were charged with theft on the basis of the materials from that police investigation.

12. In February 2003 the case was brought to the Plovdiv District Court, which on 20 February remitted it back to the prosecution authorities because of procedural breaches.

13. On an unspecified date thereafter the charges against Mr R.R. were dropped.

14. On an unspecified date in the end of 2003 or the beginning of 2004 the case was again brought to the District Court.

15. On 24 November 2004 the second, third, fourth and fifth applicants concluded a plea bargain agreement and were sentenced to three months' imprisonment suspended for a period of three years. On the same day the agreement was approved by the Plovdiv District Court.

16. The first applicant did not take part in the above events and was never a party to the criminal proceedings.

THE LAW

I. COMPLAINTS OF THE FIRST APPLICANT

17. In a letter dated 26 November 2009 the first applicant requested the Court to strike the application out of its list of cases in respect of him as he had not been a party to the criminal proceedings.

18. The Court considers that, in these circumstances, the first applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case in respect of this applicant. In view of the above, it is appropriate to strike the case out of the list in so far as it has been brought by the first applicant.

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

19. The remaining applicants complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

A. The second, third and fourth applicants

1. Period to be taken into consideration

20. The Government argued that for the purposes of Article 6 of the Convention the criminal proceedings commenced only on 29 January 2002 when the applicants were charged. Thus, the Government contended that the proceedings had lasted for about two years and ten months. Accordingly, they considered that the applicants' complaints should be rejected as being manifestly ill-founded.

21. The Court reiterates that in criminal matters, Article 6 of the Convention comes into play as soon as a person is "charged". According to the Court's case-law, the word "charge" in Article 6 § 1 must be interpreted as having an autonomous meaning in the context of the Convention and not on the basis of its meaning in domestic law. Thus, whilst "charge", for the purposes of Article 6 § 1 may in general be defined as "the official notification given to an individual by the competent authority of an allegation that he has committed a criminal offence", it may in some

instances take the form of other measures which carry the implication of such an allegation and which likewise substantially affect the situation of the suspect (see, among many others, *Deweer v. Belgium*, 27 February 1980, § 46, Series A no. 35, *Eckle v. Germany*, 15 July 1982, § 73, Series A no. 51 and *Corigliano v. Italy*, 10 December 1982, § 34, Series A no. 57).

22. In the present case the second, third and fourth applicants were caught by the police with the stolen goods as early as 24 August 1993. They were questioned in connection to that offence and confessed to taking part in its commission on 27 August 1993 and 2 September 1993 (see paragraphs 5 and 6 above). These confessions constituted part of the materials under police investigation no. 582/93, on the basis of which on 29 January 2002 these applicants were charged with theft (see paragraphs 7 and 11 above).

23. Having regard to these facts and applying the principles set out above, the Court finds that in the present case the second, third and fourth applicants' situation was "substantially affected" and they could be considered as subject to a "charge" from the moment when they were questioned by the police and confessed to the theft (see, with further reference, *Yankov and Manchev v. Bulgaria*, nos. 27207/04 and 15614/05, §§ 17-18 and §§ 23-24, 22 October 2009). Accordingly, the beginning of the period to be taken into consideration is 27 August 1993 in respect of the third and fourth applicants and 2 September 1993 in respect of the second applicant.

24. The period ended on 24 November 2004 when the applicants concluded a plea bargain agreement. It thus lasted about eleven years and three months for a preliminary investigation and one level of jurisdiction.

2. Admissibility

25. The Court notes that the complaint of the second, third and fourth applicants in respect of the length of the criminal proceedings against them is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

3. Merits

26. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II.).

27. 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,

among many others, *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, § 30, 23 September 2004 and *Yankov and Manchev v. Bulgaira*, cited above §§ 17-26). Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. In particular, the Court notes that the major source of delay in the present case was the lack of sufficient activity from September 1993 to January 2002 when the case was effectively dormant (see paragraph 8 above).

28. In view of the above and having regard to its case-law on the subject and the global length of the proceedings, 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 in respect of the second, third and fourth applicants.

B. The fifth applicant

29. The Court notes that the fifth applicant, although seen by the police when transporting the stolen fruits on 24 August 1993 and considered as a suspect under police investigation no. 582/93, was not questioned in connection to the theft at that time and no criminal proceeding were opened against him until 2002. Thus, it is questionable whether he was aware of the investigation and how, if at all, he had been affected by the investigation between 1993 and 2002. He was questioned for the first time only on 29 January 2002 (see paragraph 11 above). On the same date criminal proceedings were opened against him and the rest of the applicants.

30. Therefore, the Court considers that the fifth applicant's situation was not "substantially affected" prior to 29 January 2002. Accordingly, in respect of this applicant the period to be taken into consideration started on 29 January 2002 and ended on 24 November 2004 (see paragraph 15 above). It thus lasted two years, nine months and twenty six days for a preliminary investigation and one level of jurisdiction. Under these circumstances, the Court finds that although there were delays in the proceedings, which could be attributed to the authorities, such as the remittal of the case for procedural breaches (see paragraph 12 above), the proceedings' global duration in respect of the fifth applicant was not in breach of the "reasonable time" requirement.

31. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

32. The second, third, fourth and fifth applicants further complained of the lack of an effective remedy in respect the excessive length of the proceedings against them. They relied on Article 13 of the Convention, which reads 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."

33. The Government did not comment.

A. The second, third and fourth applicants

1. Admissibility

34. The Court notes that the complaint of the second, third and fourth applicants under Article 13 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

35. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). It notes that it has frequently found violations of Article 13 of the Convention in cases raising issues similar to the one in the present case (see, with further references, *Myashev v. Bulgaria*, no. 43428/02, §§ 22 and 23, 8 January 2009, and *Yankov and Manchev*, cited above, §§ 32-34). It sees no reason to reach a different conclusion in the present case.

36. There has therefore been a violation of Article 13 of the Convention.

B. The fifth applicant

37. The Court reiterates that Article 13 applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, § 52). Having regard to the above conclusion that the fifth applicant's complaint under Article 6 § 1 of the Convention in respect of the length of the criminal proceedings is manifestly ill-founded, in the present case that applicant did not have an "arguable claim" as regards a violation of his right to a trial within a reasonable time.

38. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicants claimed a total of 52,000 euros (EUR), EUR 13,000 per person, in respect of non-pecuniary damage.

41. The Government submitted that in case a violation is found, this would constitute a sufficient just satisfaction within the meaning of Article 41 of the Convention.

42. The Court observes that the second, third and fourth applicants must have sustained non-pecuniary damage. Ruling on an equitable basis and taking into account all the circumstances of the case, it awards under this head EUR 2,000 jointly to the second and third applicants and EUR 2,000 to the fourth applicant.

B. Costs and expenses

43. The applicants also claimed EUR 3,150 in lawyer's fees for the proceedings before the Court, EUR 45 for postage and EUR 30 for office materials. In support of this claim the fourth and the fifth applicants presented an agreement with their lawyers and a time sheet for forty five hours at the hourly rate of EUR 70. The applicants requested that the amount awarded for costs and expenses under this head be paid directly to their lawyers, Mrs S. Stefanova and Mr A. Atanasov.

44. The Government contested these claims as excessive.

45. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600, covering costs under all heads, payable directly into the bank account of the applicants' legal representatives.

C. Default interest

46. 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. Decides to strike the application out of its list of cases under Article 37 § 1 (a) of the Convention, in so far as it has been brought by the first applicant Mr Hristo Yankov Yankov;

2. *Declares* the application inadmissible in respect of the fifth applicant Mr Manol Zlatanov Gogov;

3. *Declares* the complaints of the remaining applicants admissible;

4. *Holds* that in respect of the second, third and fourth applicants:
   a) there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;
   b) 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 proceedings;

5. *Holds*
   a) that the respondent State is to pay to the second, third and fourth applicants, 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) jointly to the second and third applicants, Mr Rangel Rangelov Yankov and Mrs Ginka Andonova Yankova, EUR 2,000 (two thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) to the fourth applicant, Mrs Zapryana Angelova Gogova, EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the three applicants, in respect of costs and expenses, payable directly into the bank account of the applicants' legal representatives;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 23 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President