



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

FIFTH SECTION

CASE OF MIRCHEV AND OTHERS v. BULGARIA

(Application no. 71605/01)

JUDGMENT

STRASBOURG

27 November 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 Mirchev and Others v. Bulgaria,

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

Rait Maruste, *President*,

Karel Jungwiert,

Volodymyr Butkevych,

Renate Jaeger,

Mark Villiger,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska, *judges*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 4 November 2008,

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

PROCEDURE

1. The case originated in an application (no. 71605/01) 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 nine Bulgarian nationals: Mr Stoyan Mihaylov Mirchev, Mr Stanish Bonev Panayotov, Mr Emil Yordanov Hristov, Mr Milko Kalev Balev, Mr Yordan Nikolov Yotov, Mr Grigor Georgiev Stoichkov, Mr Ivan Stoyanov Iliev, Mr Georgi Mitev Karamanev and Mr Georgi Yordanov Momchev (“the applicants”). The application was lodged by nine introductory letters sent between 13 January and 10 April 2000.

2. The applicants were represented by Mrs I. Loulcheva, Mrs Y. Vandova, Mr I. Minkov, Mr E. Komitov, Mr D. Chavdarov and Mr Tz. Georgiev, lawyers practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Mrs M. Dimova, of the Ministry of Justice.

3. On 21 February 2007 the President of the Fifth Section decided to give notice to the Government of the complaint about the length of proceedings. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 1 October 2008, the Government, pursuant to Rule 29 § 1 (a), informed the Court that they had appointed in her stead another elected judge, namely Judge Lazarova Trajkovska.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1930, 1925, 1920, 1920, 1926, 1931, 1934, 1931 and 1924 respectively. On 8 October 2002 the fourth applicant, Mr Milko Kalev Balev, passed away. By a letter of 10 April 2006 his wife, Mrs Maria Vasileva Baleva and his sons, Mr Vladimir Milkov Balev and Mr Kalin Milkov Balev, informed the Court that they wished to continue the present application in his stead. The remaining applicants live in Sofia.

6. Prior to 1989 all nine applicants occupied leading positions in the Council of Ministers (the government) and the Bulgarian Communist Party (“the BCP”).

7. On 9 July 1992 the Chief Public Prosecutor's Office opened preliminary investigation against twenty-two former members of the Bureau of the Council of Ministers and the Secretariat of the Central Committee of the BCP, including the nine applicants and Mr A. Lukanov and Mr O. Doinov, whose applications relating to the same criminal proceedings were decided by the European Court of Human Rights in 1997 and 2007 (*Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports of Judgments and Decisions* 1997-II, and *Doinov v. Bulgaria*, no.68356/01, 27 September 2007). On an unspecified date the applicants were charged with abuse of office and misappropriation on the ground that between 1981 and 1989 they had participated in the adoption of decisions to provide financial assistance or extend loans, totalling 243,537,000 old Bulgarian leva, to foreign countries and political parties.

8. Between July 1992 and February 1993 the prosecution authorities carried out a number of investigations.

9. After February 1993 the criminal proceedings were stayed for undetermined periods of time on at least four occasions. The last such occasion was on 28 May 1995. The proceedings were resumed on 15 June 1999.

10. By a decision of the Sofia city public prosecutor's office of 28 January 2000 the criminal proceedings against the applicants were terminated. The prosecution found that the actions of the accused, including the nine applicants, had not been punishable under domestic criminal legislation at the time: the funds in question had been included as expenditure in the State budget, the decisions had been adopted without exceeding the powers granted to the accused under the existing legislation and the provision of such aid was in conformity with the State's international obligations. Reference was made to this Court's judgment in the case of *Lukanov v. Bulgaria* (cited above) where it had been concluded in respect of the same domestic proceedings that:

“... no evidence has been adduced to show that such decisions were unlawful, that is to say contrary to Bulgaria's Constitution or legislation, or more specifically that the decisions were taken in excess of powers or were contrary to the law on the national budget” (§ 43).

11. On 16 February and 27 March 2000 the decision of the Sofia city public prosecutor's office to terminate the proceedings was upheld by the Sofia appellate public prosecutor's office and the Sofia Court of Appeal, respectively.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. Under the State and Municipalities Responsibility for Damage Act of 1988 (“the SMRDA”) individuals can in certain circumstances seek damages for unlawful acts of the authorities. The Act does not mention excessive length of proceedings as a ground for an action for damages. Nor is there any practice in the domestic courts of awarding damages for excessive length of proceedings.

THE LAW

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

13. The 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...”

14. The period to be taken into consideration began on 7 September 1992, when the Convention entered into force for Bulgaria. At that point the proceedings had been pending before the investigating authorities for two months.

15. The period in question ended on 27 March 2000. Accordingly, the criminal proceedings lasted for seven years, eight months and nineteen days of which a period of seven years, six months and twenty days falls within the Court's competence *ratione temporis*. During that time the criminal proceedings remained at the preliminary investigation stage.

A. Admissibility

16. The Government submitted that the applicants had failed to exhaust the available domestic remedies because they had not initiated actions for damages under the SMRDA.

17. The Court notes that a similar objection has been rejected in an earlier case (*Doinov v. Bulgaria*, cited above, §§ 35-36) because the SMRDA does not provide for damages in respect of length of proceedings (see paragraph 12 above). The Court sees no reason to reach a different conclusion in the present case.

18. The Court therefore rejects the Government's objection. It further finds that this complaint 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.

B. Merits

19. The Government did not comment on the merits of the complaint.

20. 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)

21. The Court has already examined the reasonableness of the same proceedings in its judgment in the case of *Doinov v. Bulgaria* (cited above, § 41) where it found a breach of Article 6 § 1. It sees no reason to reach a different conclusion as there are no specific circumstances regarding any of the applicants in the present case.

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

II. ALLEGED VIOLATION OF ARTICLE 7 OF THE CONVENTION

Admissibility

23. The applicants complained under Article 7 of the Convention that the authorities had initiated criminal proceedings against them for actions which had not constituted offences under domestic criminal legislation at the time.

24. The Court considers that the applicants cannot claim to have been “victims”, within the meaning of Article 34 of the Convention, of a violation under Article 7 § 1 of the Convention by the mere opening of criminal proceedings against them. The proceedings remained at the stage

of the preliminary investigation and never resulted in actual convictions and punishment. In addition, they were terminated because the authorities themselves concluded that the actions of the applicants had not constituted offences.

25. 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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.”

27. The applicants did not submit claims for just satisfaction. Accordingly, the Court considers that there is no call to award them any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 27 November 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Rait Maruste
President