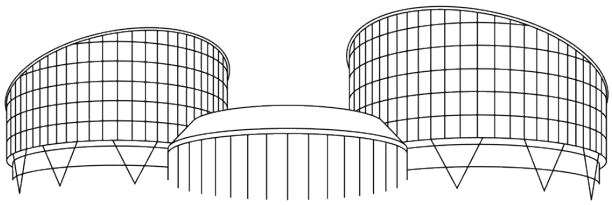

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF P.M. v. BULGARIA

(Application no. 49669/07)

JUDGMENT

STRASBOURG

24 January 2012

FINAL

24/04/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of P.M. v. Bulgaria,

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 4 January 2012,

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

PROCEDURE

1. The case originated in an application (no. 49669/07) 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, Ms P.M. ("the applicant"), on 25 October 2007.

2. The applicant was represented by Mr V. Vasilev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged, in particular, that the investigation into sexual offences of which she had been a victim had been ineffective, and that she had not had an effective domestic remedy in this respect.

4. On 29 September 2010 the President of the Fifth Section of the Court decided to give notice of the application to the Government and to grant the applicant anonymity (Rule 47 § 3 of the Rules of Court). It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The case was subsequently transferred to the Fourth Section, following the re-composition of the Court's sections on 1 February 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and lives in Stara Zagora.

1. The events of 29 March 1991

6. According to the judgment of 30 November 2005 of the Stara Zagora District Court, in the afternoon of 29 March 1991 the applicant, then aged thirteen, was invited to a party at the home of Mr T.Z. There were several young people in the apartment. After some time Mr D.I., then aged seventeen, took the applicant to a separate room and threatened her, after which he raped her. Then he went out and Mr T.Z., who was twenty-one years old, entered the room. He beat the applicant and attempted to rape her but was interrupted by his mother ringing the doorbell. Mr T.Z. asked the applicant and the other guests to leave.

7. The applicant told her parents that she had been raped, and they took her to the doctor and informed the police.

8. In a medical expert report of the same date two experts of the Stara Zagora Military Medical Institute established that there was an injury to the applicant's hymen and that she had several bruises on her head.

2. The pre-trial investigation

(a) Preliminary inquiry

9. On 4 April 1991 the applicant's mother lodged a written complaint with the police authorities against Mr T.Z. and Mr D.I.

10. The police carried out an inquiry, in the course of which it took statements from the applicant, Mr T.Z. and Mr D.I. The two suspects gave their addresses.

(b) Opening of criminal proceedings

11. On 27 January 1992 the Stara Zagora district prosecutor opened criminal proceedings against Mr T.Z. and Mr D.I.

12. On 9 April 1992 Mr T.Z. was charged with attempted aggravated rape and was ordered not to leave the town pending the criminal proceedings against him. On the same day the investigator questioned him, the applicant and a witness.

13. In a letter of 10 April 1992 the investigator requested the police to establish the full names and addresses of four witnesses.

(c) Stay of the proceedings

14. On 28 April 1992 the investigator established that Mr D.I. had not appeared before him, although he had been duly summoned, and that the whereabouts of certain witnesses were unknown. He proposed that the criminal proceedings be stayed. By a decree of 24 November 1992 the district prosecutor stayed the criminal proceedings against Mr T.Z. and Mr D.I., on the ground that the latter's whereabouts were unknown.

15. There is no information as to whether the authorities took any steps to find the persons concerned.

(d) Resumption of the proceedings and further investigation

16. In a report of 8 September 2000 a police officer stated that Mr D.I. had been found. The address specified in the report was the same as the one Mr D.I. had given in his written statement of 1991. In a statement of 8 September 2000 Mr D.I. said that he had not changed his place of residence and that he had never been summoned by the investigator.

17. On 19 December 2000 the district prosecutor resumed the criminal proceedings against Mr T.Z. and Mr D.I.

18. In a letter of 26 February 2001 the investigator asked the district prosecutor to extend the period of investigation by six months, stating that the work on the case had not been completed on time because of his involvement in other cases. On 19 March 2001 the district prosecutor granted a two-month extension.

19. In a letter of 28 June 2001 the district prosecutor instructed the investigator to take urgent measures to complete the investigation, informing him that the case would be subject to special monitoring.

20. On 5 November 2002 Mr D.I. was charged with aggravated rape and was ordered not to leave the town pending the criminal proceedings against him. On 14 November 2002 he was questioned before a judge.

21. In the period between 7 November and 5 December 2002 the investigator questioned twelve witnesses, and appointed two experts to make a psychiatric and psychological assessment of Mr T.Z., Mr D.I. and the applicant, as well as a medical expert, who, on the basis of the documents in the file, confirmed the conclusions of the medical report of 29 March 1991.

22. The results of the preliminary investigation were communicated to Mr T.Z. and Mr D.I. on 4 March 2003.

23. On 6 March 2003 the investigator concluded the investigation and referred the file to the district prosecutor with the recommendation that the two accused should be put on trial.

(e) The first termination of the criminal proceedings and their partial resumption

24. In a decree of 30 September 2003 the district prosecutor terminated the criminal proceedings in respect of Mr D.I. as time-barred. He found that a shorter prescription period was applicable to him because he had been under age at the time of the offence.

25. In a decree of 29 March 2004 the district prosecutor terminated the criminal proceedings in respect of Mr T.Z., finding that the charges against him had not been proved and that it would be practically impossible to

gather any new evidence in view of the period of time which had elapsed since the events.

26. Following an appeal by the applicant, on 20 April 2004 the Stara Zagora District Court quashed the decree of 29 March 2004 and resumed the proceedings in respect of Mr T.Z. It found that the district prosecutor should have ordered witness confrontations.

27. On 30 April 2004 the district prosecutor referred the case back to the investigator for further examination.

28. In the period from 7 to 11 June 2004 the investigator carried out four witness confrontations.

29. A second psychiatric and psychological report was submitted in respect of the applicant on 22 June 2004. It confirmed that she had been able to understand the events of 29 March 1991 and that she had not been able to effectively resist the mental and physical violence against her. It was unlikely that the applicant had testified under the influence of her parents.

30. On 9 June 2004 the investigator ordered an expert examination of the clothes allegedly worn by the applicant on the day of the incident, as well as of other items. Several expert reports were prepared in the period from 16 to 22 June 2004.

31. On 25 June 2004 the results of the preliminary investigation were presented to Mr T.Z. On the same date the investigator concluded the investigation and referred the file to the district prosecutor with the recommendation that Mr T.Z. should be tried for attempted rape.

(f) The second termination of the criminal proceedings and their resumption

32. On 19 July 2004 the district prosecutor once again terminated the criminal proceedings against Mr T.Z. for lack of direct evidence.

33. Following an appeal by the applicant, on 25 August 2004 the Stara Zagora regional public prosecutor's office upheld the decree of 19 July 2004. The applicant appealed further.

34. In a decree of 21 September 2004 the Plovdiv appeals public prosecutor's office quashed the decrees of 25 August 2004, 19 July 2004 and 30 September 2003 (see paragraph 24 above) and referred the case back to the district prosecutor for further investigation. The district prosecutor was ordered to monitor the case and see to the lawful and timely completion of the investigation within two months. The decision further stated that the applicant's account of the events had been corroborated by numerous pieces of circumstantial evidence and that the prescription period for prosecuting Mr D.I. had not expired because there was evidence of complicity between the two accused which affected the legal characterisation of the charges.

35. On 5 October 2004 the district prosecutor referred the case back to the investigator with instructions to gather additional evidence within thirty days. On 8 November 2004 this deadline was extended by thirty days.

36. In a letter of 3 January 2005 the district prosecutor instructed the investigator to send him the file as soon as possible. In a note of 12 January 2005 the district prosecutor stated that he had reached an agreement with the investigator that the file would be sent by 31 January 2005.

37. A confrontation between the applicant and Mr T.Z. was carried out on 17 January 2005.

38. On 18 January 2005 the applicant was questioned before a judge.

39. On 21 January 2005 Mr D.I. and Mr T.Z. were charged with aggravated rape and attempted aggravated rape respectively, committed in complicity, and were ordered not to leave the town pending the criminal proceedings. They were questioned on the same day.

40. A confrontation between the applicant and Mr D.I. was carried out and two witnesses were questioned before a judge between 24 and 26 January 2005.

41. An expert report concerning a tear in the jeans allegedly worn by the applicant on the date of the incident was submitted on 31 January 2005.

42. The results of the preliminary investigation were communicated to Mr D.I. and Mr T.Z. on 2 and 3 February 2005 respectively.

43. On 9 February 2005 the investigator concluded the investigation and referred the file to the district prosecutor with the recommendation that Mr D.I. and Mr T.Z. should be tried on the charges.

3. The trial

44. An indictment against the two accused was filed with the Stara Zagora District Court on 22 February 2005.

45. Two hearings scheduled for 14 April and 22 June 2005 were postponed because one of the accused and the lawyer of the other accused had fallen ill.

46. A hearing was held on 11 July 2005. The applicant joined the proceedings as a private prosecutor. She did not bring a civil action.

47. On 12 October and 30 November 2005 the District Court held hearings. The defendants did not plead the statute of limitations but asked the court to pronounce a judgment.

48. In a judgment of 30 November 2005 the District Court convicted Mr D.I. of aggravated rape but relieved him from liability and punishment. It reasoned that although Mr D.I. had not pleaded the statute of limitations, the latter was nevertheless an absolute obstacle to his punishment. It further convicted Mr T.Z. of attempted aggravated rape and sentenced him to three years' imprisonment. It found that the long lapse of time since the rape represented a mitigating factor which must be taken into account in determining his punishment. The court acquitted the two accused of the complicity charges.

49. Upon appeals by the applicant, the district prosecutor and Mr T.Z., on 20 October 2006 the Stara Zagora Regional Court upheld the judgment

of 30 November 2005 in respect of Mr D.I. This part of the judgment was not subject to appeal and became final.

50. The Regional Court further terminated the criminal proceedings against Mr T.Z. as time-barred, finding that the prescription period for his prosecution had expired meanwhile.

51. On 18 May 2007 the applicant's lawyer was informed of the judgment and of the applicant's right to appeal against the termination of the criminal proceedings against Mr T.Z. The applicant did not appeal.

II. RELEVANT DOMESTIC LAW AND PRACTICE

52. Pursuant to the 1974 Criminal Procedure Code, in force at the relevant time and until 2006, as well as the constant case-law of the Supreme Court of Cassation, the courts had to terminate criminal proceedings upon expiry of the statutory period of limitation. Nevertheless, the accused could request their continuation (Article 21). In such a case, the court could find him guilty but could not punish him (Article 303).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 8 OF THE CONVENTION

53. The applicant complained that the investigation into the sexual offences of which she had been a victim had been ineffective, and that she had not had an effective domestic remedy in this respect. She relied on Articles 3, 8 and 13 of the Convention.

54. Having regard to the nature and the substance of the applicant's complaints in the present case, the Court considers that the proper legal characterisation of the complaints is the procedural limb of Articles 3 and 8 of the Convention, which read:

> **Article 3**
>
> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."
>
> **Article 8 § 1**
>
> "Everyone has the right to respect for his private ... life ..."

A. Admissibility

1. Competence ratione temporis

55. Although the respondent Government have not raised any objection as to the Court's competence *ratione temporis*, this issue nevertheless calls for consideration by the Court (see *Blečić v. Croatia* [GC], no. 59532/00, §§ 63 et seq., ECHR 2006-III).

56. The Court has stated that the procedural obligation to carry out an effective and prompt investigation under Article 2 has evolved into a separate and autonomous duty capable of binding the State, even when the substantive act took place before the critical date (see *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009). For such a procedural obligation to come into effect, a significant proportion of the investigating steps required by this provision will have been or ought to have been taken after the critical date (*ibid*., § 163). Subsequently the Court applied this principle to cases concerning deaths at the hands of private individuals (see *Lyubov Efimenko v. Ukraine*, no. 75726/01, § 63, 25 November 2010; and *Frandeş v. Romania* (dec.) no. 35802/05, 17 May 2011). Furthermore, in *Tuna v. Turkey* (no. 22339/03, § 58, 19 January 2010) and in *Stanimirović v. Serbia* (no. 26088/06, § 28, 18 October 2011, not yet final), it went on to hold that the principles established in *Šilih* applied similarly to the procedural obligation to investigate under Article 3.

57. In the present case, while the sexual offences against the applicant were committed in 1991, before the entry into force of the Convention in respect of Bulgaria on 7 September 1992, most of the procedural steps were taken after that date (see paragraphs 9-51 above).

58. In view of the above, the Court finds that the alleged procedural violation of Article 3 falls within the Court's temporal jurisdiction and that it is therefore competent to examine this part of the application. It is true that the applicant also relied on Article 8 in the present case and that in the case of *M.C. v. Bulgaria* (no. 39272/98, ECHR 2003-XII) the Court referred to both Article 3 and Article 8, finding that there was an obligation on States to enact criminal-law provisions effectively punishing rape and to apply them in practice through effective investigation (see §§ 148-153 of that judgment). Noting that in the present case the applicant's complaints are limited to the effectiveness of the investigation and that Article 3 provides sufficient legal basis for the State's duty to conduct an investigation into serious offences against an individual's physical integrity, the Court considers that it is not necessary in the particular circumstances of the instant case to decide whether its temporal jurisdiction also extends, in situations like the present one, to issues under Article 8. Therefore it will confine itself to determining whether the events that occurred after the entry

into force of the Convention in respect of Bulgaria disclosed a breach of Article 3 under its procedural limb (see *Tuna*, cited above, § 63).

2. Exhaustion of domestic remedies and conclusion on admissibility

59. The Court notes that the applicant did not appeal against the decision of the Regional Court of 20 October 2006 to terminate the criminal proceedings against Mr T.Z. as time-barred (see paragraph 51 above). Nevertheless, in view of the clear-cut domestic legislation and case-law on the statutory period of limitation (see paragraph 52 above), it does not appear that a cassation appeal by the applicant would have offered any prospect of a different outcome. The Court therefore considers that the complaint under Article 3 cannot be dismissed for failure to exhaust domestic remedies.

60. It further notes that the complaint under Article 3 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

61. The applicant stated that although she had been a victim of a serious sexual assault at the young age of thirteen, the authorities had unduly delayed the gathering of evidence for more than ten years, thus preventing the establishment of the truth and the punishment of the offenders. She complained, in effect, that there had been no effective official investigation of the offences, affecting her personal integrity, of which she had been a victim.

62. The Government stated that they would leave it to the Court to decide whether Article 3 had been violated. They acknowledged that during the pre-trial stage the proceedings had been suspended for a considerable period of time. Nevertheless, they argued that the authorities had conducted a thorough and careful investigation and that no delays had occurred during the trial.

2. The Court's assessment

63. The relevant principles concerning the State's obligation inherent in Article 3 of the Convention to investigate cases of ill-treatment, and in particular sexual abuse, committed by private individuals, are set out in *M.C.*, cited above, §§ 148-153.

64. As regards the Convention requirements relating to the effectiveness of an investigation, the Court has held that it should in principle be capable

of leading to the establishment of the facts of the case and to the identification and punishment of those responsible. This is not an obligation of result, but one of means. The authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, such as witness testimony and forensic evidence, and a requirement of promptness and reasonable expedition is implicit in this context (see *Denis Vasilyev v. Russia*, no. 32704/04, § 100, 17 December 2009, with further references). The promptness of the authorities' reaction to the complaints is an important factor (see *Labita v. Italy* [GC], no. 26772/95, §§ 133 et seq., ECHR 2000-IV). Consideration has been given in the Court's judgments to matters such as the opening of investigations, delays in identifying witnesses or taking statements (see *Mătăsaru and Saviţchi v. Moldova*, no. 38281/08, §§ 88 and 93, 2 November 2010), the length of time taken for the initial investigation (see *Indelicato v. Italy*, no. 31143/96, § 37, 18 October 2001), and unjustified protraction of the criminal proceedings resulting in the expiry of the statute of limitations (see *Angelova and Iliev v. Bulgaria*, no. 55523/00, §§ 101-103, 26 July 2007).

65. Applying these principles to the present case, the Court notes that on 7 September 1992, the date of entry into force of the Convention in respect of Bulgaria, the investigation was dormant, no significant investigative measures having been carried out on the ground that the address of one of the suspects, Mr D.I., was unknown. It is highly significant, however, that when Mr D.I. was eventually "found" eight years later, it turned out that he had never changed his address (see paragraph 16 above). Apparently no attempts were made to establish his whereabouts during this considerable period. No consideration was given to the possibility of separating the cases against Mr T.Z. and Mr D.I. and proceeding with the case in respect of the former. In the Court's view, the authorities' inaction verges on arbitrariness, having regard, in particular, to the gravity of the facts and the applicant's age at the relevant time. As a result, a number of urgent investigative measures, such as the commissioning of an expert examination of the applicant's clothes and interviewing witnesses, were taken only many years after the rape (see paragraphs 21 and 30 above). It is to be noted furthermore that two decisions to discontinue the criminal proceedings were issued, only to be subsequently set aside by the supervising prosecutors (see paragraphs 24-34 above).

66. In view of the exceptionally slow pace of the proceedings, it is not surprising that the prosecution eventually became time-barred. The domestic courts discontinued the proceedings against one of the defendants, Mr T.Z., and although they convicted the other one, Mr D.I., they did not punish him because of the statute of limitations (see paragraphs 48-50 above). Thus, although the facts of the case and the identity of the offenders were established, albeit many years after the rape, the investigation can

hardly be regarded as having been effective and capable of leading to the proper punishment of those responsible.

67. It follows that there has been a violation of the respondent State's procedural obligations under Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLES 6 AND 13 OF THE CONVENTION

68. The applicant complained that the length of the criminal proceedings against her aggressors had been excessive and that she had not had an effective domestic remedy in this respect. She relied on Articles 6 § 1 and 13 of the Convention, which provide, in so far as relevant:

> **Article 6 § 1**
>
> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."
>
> **Article 13**
>
> "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."

69. The Court notes that the applicant did not join the criminal proceedings against her aggressors as a civil party (see paragraph 46 above) and that therefore the proceedings at issue did not concern the determination of her civil rights within the meaning of Article 6 (see *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I). The Court further notes that the applicant's grievances concerning the protracted investigation have already been examined under Article 3 as an aspect of its effectiveness (see paragraphs 65-67 above).

70. It follows that Article 6 § 1 does not apply, and the complaints under Article 6 and, as a consequence under Article 13, are therefore incompatible *ratione materiae* with the provisions of the Convention and should be rejected pursuant to Article 35 §§ 3 and 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. 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

72. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the violations of her rights under the Convention, stating, in particular, that the prolonged and ineffective investigation of the sexual offences against her had aroused in her feelings of injustice, helplessness and frustration.

73. The Government contested this claim.

74. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the breaches of her rights found in the case. Taking into account all the circumstances of the case, and deciding on an equitable basis, the Court awards her EUR 15,000 under this head.

B. Costs and expenses

75. The applicant sought EUR 3,000 for fifty hours of legal work by her lawyer in the proceedings before the Court, at an hourly rate of EUR 60. In support of this claim she presented a contract and a time sheet. She further claimed 500 Bulgarian levs for postage, translation, and office expenses but did not present any invoices or receipts in support of her claim.

76. The Government considered that the claims were excessive.

77. 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 are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, and taking into account the applicant's failure to provide all necessary documents, such as invoices and receipts for postage or office expenses, the Court finds it reasonable to award the sum of EUR 3,000 to the applicant, plus any tax that may be chargeable to her.

C. Default interest

78. The Court considers it appropriate that the default interest rate 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 complaint under Article 3 of the Convention concerning the alleged ineffective investigation of the sexual offences against the applicant admissible and the complaints under Articles 6 and 13 inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention under its procedural limb;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months of 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 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3,000 (three 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;

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

Done in English, and notified in writing on 24 January 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President