



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

FOURTH SECTION

CASE OF POPNIKOLOV v. BULGARIA

(Application no. 30388/02)

JUDGMENT
(Just satisfaction)

STRASBOURG

11 October 2011

FINAL

11/01/2012

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

In the case of **Popnikolov v. Bulgaria**,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 20 September 2011,

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

PROCEDURE

1. The case originated in an application (no. 30388/02) against the Republic of Bulgaria lodged with the Court on 2 February 2002 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, Mr Dimitar Nikolov Popnikolov (“the applicant”), who was born in 1955 and lives in Varna. The applicant complained both in his personal capacity and as Sole Trader “DINIPO-666-Dimitar Nikolov Popnikolov” (the “sole trader”), which he registered in 1992 in Varna.

2. In a judgment delivered on 25 March 2010 (“the principal judgment”), the Court held that there had been a violation of the applicant’s right, implicit under Article 6 § 1, to have a final judgment in his favour enforced. The Court also held that there had been a violation of Article 1 of Protocol No. 1 in that the State had, without a lawful reason, failed to comply with its obligation, as determined by a final judgment, to sell the relevant production facility to the applicant at a preferential price.

3. Since the question of the application of Article 41 of the Convention was not yet ready for decision, the Court reserved it and invited the Government and the applicant to submit, within two months, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

4. The applicant and the Government each filed observations.

THE LAW

5. 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

1. *Pecuniary damage*

6. The applicant claimed 822,250 euros (EUR) in respect of pecuniary damage. In so far as it may be understood from the applicant's unclear submissions, this sum corresponded to the market value of the relevant part of a commercial centre constructed in 2007 on the spot where the production facility he had been entitled to buy had been located. This claim was not supported by any evidence.

7. The Government submitted that the Court's award should not exceed the direct and immediate damage genuinely resulting from the violations found. In their view, the method for calculating pecuniary damage proposed by the applicant was speculative and fanciful.

8. The Court observes that the above claim is not supported by any evidence and is speculative. Moreover, there can be no certainty as to whether the applicant would have eventually purchased the property at issue, even if the State had complied with its obligation to sell it to him.

9. The Court considers, however, that the applicant must have suffered a loss of opportunity as a result of the authorities' unlawful refusal to honour their obligation to sell him, at a special preferential price, the production facility he had leased and was entitled to buy. Indeed, the Government do not appear to dispute that some pecuniary damage occurred but, rather, object as regards the amount claimed and the method of calculation.

10. As it has done in other cases where it was difficult to quantify loss of opportunity with precision (see *Sporrong and Lönnroth v. Sweden* (Article 50), 18 December 1984, §§ 27-32, Series A no. 88; *Sildedzis v. Poland*, no. 45214/99, § 58, 24 May 2005; *Kirilova and Others v. Bulgaria* ((just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 33, 14 June 2007; and *Naydenov v. Bulgaria*, no. 17353/03, § 96, 26 November 2009), the Court must make an overall assessment, taking into consideration all relevant factors.

11. Noting, in particular, that the production facility that the applicant was entitled to purchase apparently did not exceed 400 square metres and was suitable at the relevant time for electrical motor rewinding and repair,

the Court finds it appropriate to award EUR 5,000 in respect of loss of opportunity.

2. Non-pecuniary damage

12. The applicant claimed EUR 102,200, stating that he had suffered greatly as a result of the violations of his rights and that his health had, as a consequence, deteriorated.

13. The Government considered that the claim was excessive and that the award should not exceed the sums awarded in *Kirilova and Others v. Bulgaria* ((just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, 14 June 2007). In that case each applicant obtained EUR 2,000 in respect of non-pecuniary damage (EUR 4,000 in total).

14. The Court considers that the applicant must have suffered anxiety and frustration as a result of the violations of his rights. Deciding on an equitable basis, it awards EUR 3,000 under this head.

B. Costs and expenses

15. The applicant claimed EUR 51,100 in respect of all costs incurred in the domestic proceedings and before the Court. He did not submit any supporting documents.

16. The Government stated that the claim should be dismissed as being unclear and not supported by evidence.

17. The Court reiterates that an award can be made in respect of costs and expenses only in so far as they have been actually and necessarily incurred by the applicant and are reasonable as to quantum; furthermore, Rule 60 §§ 2 and 3 of the Rules of Court requires the applicant to submit itemised particulars of all claims, together with any relevant supporting documents, failing which the Court may reject the claims (see, among other authorities, *Paksas v. Lithuania* [GC], no. 34932/04, § 122, 6 January 2011).

18. In the present case, seeing that the applicant did not produce any documents in support of his claims, the Court decides to dismiss them in their entirety.

C. Default interest

19. 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. *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 8,000 (eight thousand euros) in respect of pecuniary and non-pecuniary damage, to be converted into Bulgarian leva at the rate applicable at the date of settlement, plus any tax that may be chargeable;

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

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

Done in English, and notified in writing on 11 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President