



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

FOURTH SECTION

CASE OF NIKOLOV AND OTHERS v. BULGARIA

(Applications nos. 44184/05, 22250/06 and 37182/07)

JUDGMENT

STRASBOURG

21 February 2012

FINAL

21/05/2012

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

In the case of Nikolov and Others v. Bulgaria,

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

Lech Garlicki, *President*,

David Thór Björgvinsson,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 31 January 2012,

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

PROCEDURE

1. The cases originated in three separate applications (nos. 44184/05, 22250/06 and 37182/07) 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 three Bulgarian nationals, Mr Aleksandar Lyubomirov Nikolov (application no. 44184/05), Mr Vasil Milutinov Vasilev (application no. 22250/06) and Mr Emil Stanoev Rekarski (application no. 37182/07) (“the applicants”), on 18 November 2005, 20 May 2006 and 15 August 2007 respectively. Mr Rekarski was represented before the Court by Mr N. Teoharov, a lawyer practising in Sofia.

2. The Bulgarian Government (“the Government”) were represented by their Agent, Mrs N. Nikolova, of the Ministry of Justice.

3. On 9 February 2010 the applications were joined and communicated to the Government. It was also decided to rule on the admissibility and merits of the applications at the same time (Article 29 § 1 of the Convention).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicants, Mr Aleksandar Nikolov, born in 1957, Mr Vasil Vasilev, born in 1960, and Mr Emil Rekarski, born in 1941, are Bulgarian nationals.

A. Mr Nikolov

5. On 7 February 2001 Mr Nikolov initiated proceedings for unlawful dismissal before the Pernik District Court. The court held hearings on 27 February, 15 March and 3 April 2001. In a judgment of 2 May 2001 it found in favour of Mr Nikolov and reinstated him.

6. On 30 May 2001 the applicant's former employer appealed before the Pernik Regional Court, which held hearings on 6 December 2001 and 7 February 2002.

7. By a judgment of 7 March 2002 the Regional Court upheld the lower court's judgment.

8. On 14 May 2002 the defendant company submitted a cassation appeal. On an unspecified date the Supreme Court of Cassation ("the SCC") held a hearing in the case.

9. In a judgment of 28 April 2004 it quashed the Regional Court's judgment and remitted the case.

10. In a decision of 10 May 2005, which was not appealed against, the Regional Court discontinued on unspecified grounds the appeal proceedings initiated by the employer. Thus, the judgment of 2 May 2001 became final on 18 May 2005.

11. Apparently, after his reinstatement, Mr Nikolov was dismissed again due to structural changes in the employer company.

B. Mr Vasilev

12. On 21 January 2002 Mr Vasilev instituted proceedings for unlawful dismissal and damages before the Lom District Court. The court held hearings on 20 February and 19 March 2002.

13. In a judgment of 3 April 2002 it found in favour of Mr Vasilev, reinstated him and awarded him damages.

14. On appeal by the employer submitted on 30 April 2002, the case was examined by the Montana Regional Court, which held hearings on 9 December 2002 and 11 March 2003.

15. In a judgment of 27 March 2003 the Montana Regional Court quashed the lower court's judgment in respect of the damages awarded and upheld the remainder.

16. On 20 May 2003 the applicant's former employer filed a cassation appeal. In a decision of 18 November 2005 the SCC discontinued the cassation proceedings as the employer had not paid the relevant court fee. This decision was not appealed against and on 23 December 2005 the judgment of 3 April 2002 became final.

17. Mr Vasilev was reinstated on 8 February 2006. However, he could not take up his duties as while the proceedings were pending his contract had expired and had not been prolonged.

C. Mr Rekarski

18. On 8 January 2003 Mr Rekarski instituted proceedings for unlawful dismissal before the Sofia District Court. In a judgment of 14 July 2003 the court found in favour of Mr Rekarski and reinstated him. On appeal by the employer, in a judgment of 23 April 2004 the Sofia City Court upheld the previous court's judgment.

19. The employer instituted cassation proceedings. The SCC upheld the lower courts' judgments in a final judgment of 27 April 2007.

II. RELEVANT DOMESTIC LAW

A. Remedies for delays in civil proceedings

20. The relevant provisions in respect of remedies for delays in civil proceedings have been summarised in paragraphs 35-55 in the Court's judgment in the case of *Finger v. Bulgaria* (no. 37346/05, 10 May 2011).

B. Cassation appeal in employment disputes

21. Unlike the Code of Civil Procedure of 1952, the Code of Civil Procedure of 2008 does not provide for an automatic cassation appeal in employment disputes over dismissal from office. Under the latter Code the lower-instance courts' judgments are subject to cassation appeal only in cases which raise issues that have been adjudicated contrary to the settled practice of the SCC, in respect of which there was divergence in the practice of the lower courts, or which are of particular importance for the application of the legislation or the evolution of the legal doctrine and practice (Article 280). The employment disputes initiated before the entry into force of the new Code and pending before the SCC at that time were transferred to the Courts of Appeal, which would examine them as final instance courts.

COMPLAINTS

22. All applicants complained under Article 6 § 1 of the Convention that the proceedings connected to their dismissal were excessively lengthy.

THE LAW

I. ADMISSIBILITY

A. Mr Rekarski's complaint

23. In a letter dated 2 June 2010 the Government submitted their observations on the admissibility and merits of the applications. The Registry of the Court forwarded these observations to Mr Rekarski's representative, who was invited to submit his own observations. No reply was received.

24. In a letter dated 26 August 2010, sent by registered mail to Mr Rekarski's representative, Mr Rekarski was notified that the period allowed for submission of his observations and claims for just satisfaction had expired on 27 July 2010 and that no extension of time had been requested. His attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application.

25. The registered mail return receipt was received by the Court on 24 September 2010 with a note that the letter had been delivered on 2 September 2010. However, no response has been received ever since.

26. No further correspondence has been received from Mr Rekarski, whose last communication to the Court dates back to 15 August 2007, the date when he lodged his application.

27. The Court considers that, in these circumstances, Mr Rekarski 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 view of the above, it is appropriate to strike the case out of the list in so far as it has been brought by Mr Rekarski.

B. The remaining two applicants

28. The Government argued that Mr Nikolov and Mr Vasilev had failed to exhaust the available domestic remedies as they had not filed "complaints about delays", had not complained to the Inspectorate with the Supreme Judicial Council and had not lodged a tort claim against the State.

29. The Court has already found that the “complaint about delays” could in principle be an effective remedy in respect of length of proceedings, but that regard must be had to the specific circumstances of each case (see *Stefanova v. Bulgaria*, no. 58828/00, § 69, 11 January 2007). In the present case the Court notes that the impugned delay was caused while the cases were pending before the SCC. The Court has already found it questionable whether a “complaint about delays” could be effective in respect of delays before the SCC, seeing that there is no “higher court” to file the complaint to (see *Pavlova v. Bulgaria*, no. 39855/03, § 31, 14 January 2010; *Maria Ivanova v. Bulgaria*, no. 10905/04, § 35, 18 March 2010; *Kabakchievi v. Bulgaria*, no. 8812/07, § 41, 6 May 2010; and *Kotseva-Dencheva v. Bulgaria*, no. 12499/05, § 28, 10 June 2010). It has also held that a complaint to the Inspectorate with the Supreme Judicial Council could not be regarded as an effective remedy (see *Finger*, cited above, §§ 90-123). The Court sees no reason to reach a different conclusion on these two points in the present case.

30. In addition the Court has already found that Bulgarian law does not provide any other remedies, whether acceleratory or compensatory, in respect of the excessive length of civil proceedings (see *Finger*, cited above, § 89, with further references).

31. The Court, therefore, dismisses the Government’s objection that Mr Nikolov and Mr Vasilev have failed to exhaust available domestic remedies.

32. The Court further considers, in the light of the parties’ submissions, that the complaints of those two applicants are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring them inadmissible has been established. They must therefore be declared admissible.

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

33. 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 his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

34. The Government submitted, *inter alia*, that the cases had been examined swiftly by the first two instances. The delay before the SCC had been due to organisational difficulties and, in particular, excessive workload. This problem had been resolved with the adoption of the new Code of Civil Procedure of 2008, which, unlike the previous Code, provided for the examination of appeals by the SCC as a final instance in a very limited number of cases. The Government also submitted statistical

information according to which the number of judges in the SCC for the period between 2002 and 2007 was between 40 and 50 and the number of pending cases before that court for the same period varied between 21,665 and 25,068. During the same period the number of cases examined by that court varied between 10,326 and 13,350 per year.

35. The applicants stated that the proceedings had lasted too long, having regard, in particular, to the fact that they concerned their jobs and livelihood.

36. The Court reiterates that the reasonableness of the length of proceedings must be assessed 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, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII, and *Humen v. Poland* [GC], no. 26614/95, § 59, 15 October 1999). Furthermore, the Court takes into consideration the subject matter of the proceedings. Special diligence is required in cases concerning dismissal from office. An employee who considers that he has been wrongly suspended or dismissed by his employer has an important personal interest in securing a judicial decision on the lawfulness of that measure promptly, since employment disputes by their nature call for expeditious decision, in view of what is at stake for the person concerned, who through dismissal loses his means of subsistence (*ibid.*, § 45, and *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D). The same special diligence must, in principle, also be shown in those cases where delay could have irremediable consequences for the applicant.

37. The Court observes that Mr Nikolov's proceedings lasted about four years and four months during which the case was examined at three levels of jurisdiction. Mr Vasilev's proceedings lasted about three years and ten months, also for three levels of jurisdiction (see paragraphs 5-17 above). Taken *in abstracto*, the global length of the proceedings does not appear excessive (see by way of contrast, *Zmaliński v. Poland*, no. 52039/99, 22 March 2005 (9 years, 11 months and 3 days for three levels of jurisdiction), *Piątkowsky v. Poland*, no. 5650/02, 17 October 2006 (5 years and almost 3 months for three levels of jurisdiction) and *Chodzyńscy v. Poland*, no. 17484/02 (6 years, 9 months and 15 days for three levels of jurisdiction)).

38. The cases were, however, not complex. The Government have not argued that Mr Nikolov and Mr Vasilev were responsible for any significant delays in the proceedings (see, by contrast, *Kępa v. Poland* (dec.) no. 43978/98, 30 September 2003).

39. As to the conduct of the authorities, the Court notes that the first two instances dealt with the cases expeditiously (a little longer than a year for two instances). Significant delays occurred, however, when the cases were pending before the SCC – one year and eleven and a half months in the case

of Mr Nikolov and nearly two years and six months in the case of Mr Vasilev. It is noteworthy that during most of that time the cases were simply waiting to be examined due to the SCC's workload (see paragraph 34 above).

40. The Court notes the Government's argument that the delays occurred prior to the 2008 reform which, in their view, resolved the problem. It reiterates, however, that Article 6 § 1 imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time (see, for example, *Trippel v. Germany*, no. 68103/01, §§ 25-32, 4 December 2003; *Domańska v. Poland*, no. 74073/01, 25 May 2004; *Piątkowski v. Poland*, no. 5650/02, 17 October 2006; and *Lukjaniuk v. Poland*, no. 15072/02, 7 November 2006).

41. In the cases of the two applicants the Court is of the view that, taking into consideration all the circumstances of each case and, in particular, the fact that the proceedings were dormant during most of the time when they were pending before the SCC, as well as the consequences of the delay notwithstanding the applicants' reinstatement (see paragraphs 11 and 17 above), it cannot be said that the cases were determined within a reasonable time for the purposes of Article 6 § 1. In the instant cases the Court attaches particular importance to the fact that what was at stake for the applicants was their employment and, therefore, their livelihood. The authorities owed a duty of special diligence in such cases and the unjustified delays before the SCC were incompatible with this duty. In the case of Mr Vasilev in particular, it took the SCC almost 2 years and 6 months to take cognisance of the simple procedural fact that the employer had not paid the relevant court fee (see paragraph 16 above).

42. Therefore, having regard to all these relevant factors in their entirety the Court finds that there has been a violation of Article 6 § 1 in the cases of Mr Nikolov and Mr Vasilev (see *Drabicki v. Poland*, no. 15464/02, §§ 15 and 22-24, 14 November 2006).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. Mr Nikolov stated, without further details or supporting documents, that as a result of the slow proceedings he had lost his salary for a period of thirty-nine months, the total amount being 13,206 Bulgarian leva (BGN). He also stated that he expected “compensation under the law”.

45. Mr Vasilev claimed 60,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. The pecuniary damage alleged concerned difference in salary and loss of opportunities. The applicant did not indicate figures. He submitted copies of several documents concerning his salary. As to non-pecuniary damages, Mr Vasilev submitted that his reputation of cardiologist had been damaged unlawfully and stated that he could not continue practising his profession for a long period due to the excessively lengthy proceedings.

46. The Government contested these claims as partly unrelated to the length of the proceedings, unsubstantiated and excessive.

47. The Court notes that the applicants’ claims for pecuniary damage are unsubstantiated and that the causal link between the alleged damage and the violation found in the present case is unclear. It therefore rejects them.

48. On the other hand, it considers that the applicants must have sustained non-pecuniary damage in connection with the violation of the Convention found in their cases. Ruling on an equitable basis, it awards EUR 800 per applicant.

B. Costs and expenses

49. The applicants made no claim for costs and expenses.

C. Default interest

50. 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. *Disjoins* application no. 37182/07 (*Rekarski*) and *decides* to strike it out of its list of cases;
2. *Declares* admissible the remainder of the applications;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in the cases of Mr Nikolov and Mr Vasilev;
4. *Holds*
 - (a) that the respondent State is to pay, within three months, EUR 800 to Mr Nikolov and EUR 800 to Mr Vasilev, plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bulgarian leva 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 21 February 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Lech Garlicki
President