



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

FOURTH SECTION

**CASE OF ASKON AD v. BULGARIA**

*(Application no. 9970/05)*

JUDGMENT

STRASBOURG

16 October 2012

**FINAL**

***11/02/2013***

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



**In the case of Askon AD v. Bulgaria,**

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

Lech Garlicki, *President*,

David Thór Björgvinsson,

Päivi Hirvelä,

George Nicolaou,

Ledi Bianku,

Zdravka Kalaydjieva,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 25 September 2012,

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

## PROCEDURE

1. The case originated in an application (no. 9970/05) 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 a Bulgarian joint-stock company, Askon AD (“the applicant company”), on 12 March 2005.

2. The applicant company was represented by Mr S. Georgiev, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant company alleged, in particular, that the Supreme Court of Cassation had, in violation of the Convention, refused to examine evidence presented by it.

4. On 9 September 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant company was set up in 1991 and is based in Sofia.

6. In 1989 State-owned enterprise B. (later a State-owned company), took out a bank loan, which it failed to pay back. In 1994 the Ministry of Finance and the creditor bank signed an agreement whereby the State took over the debt, providing the bank with State-issued bonds.

7. Subsequently company B. was succeeded by the applicant company, which apparently undertook to pay back the loan to the State.

8. On 5 July 2000 the director of the State Receivables Collection Agency issued an assessment which found that on 1 May 2000 the applicant company owed the State more than 4,000,000 United States dollars (USD), equalling the principal of the 1989 loan plus interest.

9. On 21 July 2000 the applicant company brought an action for a declaratory judgment to the effect that it did not owe this sum, as the debt had become statute-barred. In a judgment of 5 June 2003 the Sofia City Court allowed the action. On 18 November 2003 the Sofia Court of Appeal affirmed this decision. Both courts awarded the applicant company the costs it had incurred in the proceedings.

10. In November 2003 the applicant company took a decision to move its registered office, which had until then been in Asenovgrad, to Sofia. A new managing director was also appointed. Those changes were entered in the company register on 18 December 2003.

11. In the civil proceedings, on an appeal by the State Receivables Collection Agency, in a final judgment of 22 June 2004 the Supreme Court of Cassation ("the SCC") upheld the lower courts' judgments. In the minutes of the hearing held before it on 14 June 2004 it was indicated that the applicant party was Askon AD Sofia.

12. However, the SCC refused to award the applicant company the costs claimed for the cassation proceedings, as it considered that those costs, amounting to USD 256,717, had been incurred by the company Askon AD based in Sofia, which had signed the contract for legal representation and the relevant invoices, and not the claimant, Askon AD based in Asenovgrad. The SCC noted also that, according to the documents in the file, Askon AD based in Sofia and Askon AD based in Asenovgrad were represented by different managing directors.

13. On 28 June 2004 the applicant company made a request under Article 192 § 4 of the Code of Civil Procedure, in force at the time (see paragraph 17 below), that the judgment of 22 June 2004 be amended and it be awarded the costs it had incurred in the cassation proceedings. It pointed out that the costs in question had been incurred by itself and not by another company, and presented evidence establishing that its registered office had been transferred to Sofia and that a new managing director had been elected. It noted that the authority form submitted by its counsel to the SCC, which had been accepted, had been signed by Askon AD based in Sofia and represented by its new managing director. The applicant company considered also that it was clear from other data, such as its taxation and registration numbers indicated on numerous documents in the case file, that Askon AD based in Sofia and Askon AD based in Asenovgrad were one and the same company.

14. By a decision of 16 September 2004 the SCC dismissed the request to amend its judgment, holding that it could not take into account the newly presented evidence about the change in the applicant company's particulars, because a party which had failed to establish certain circumstances in the course of the main proceedings could not make up for that failure in later proceedings under Article 192 § 4 of the Code of Civil Procedure.

15. Throughout the civil proceedings all summons and notifications were served on the applicant company's counsel.

## II. RELEVANT DOMESTIC LAW

16. By virtue of Article 64 of the Code of Civil Procedure of 1952, in force at the relevant time, the unsuccessful party to litigation was to reimburse the successful party's costs, including fees charged by that party's counsel.

17. Article 192 § 4 of the Code provided that within two months of a court judgment becoming final any of the parties could request that it be amended in so far as it concerned costs.

18. The parties to civil proceedings were obliged to present an address for service and inform the court of any change to it (Articles 42 § 1 and 51 § 1 of the Code).

19. Article 303 § 1(7) of the new Code of Civil Procedure, in force since 2008, provides that judicial proceedings can be reopened, where, *inter alia*

“by means of a final judgment the European Court of Human Rights has found a violation of the [Convention] or the Protocols thereto and a fresh examination of the case is necessary to remove the violation's consequences”.

## THE LAW

### I. INTRODUCTION

20. The Court notes that the applicant company contests the decision of the SCC not to award it its costs. It challenges this refusal with reference to Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. For the Court, the application is more appropriately examined under Article 6 § 1 alone.

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

21. The applicant company complained under Article 6 § 1 of the Convention that the Supreme Court of Cassation had refused to examine the evidence relating to its change of particulars and make an award in respect of costs. Article 6 § 1, in so far as relevant, reads as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

22. The Government considered that the applicant company had itself been responsible for its failure to receive the costs claimed because it had failed to duly inform the SCC of the change of its particulars.

23. The applicant company contested this argument and reiterated its complaint.

### A. Admissibility

24. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

25. The Court notes at the outset that the present case concerns a dispute about the costs to be awarded to the successful party in civil proceedings. The Court has held that costs proceedings, even though separately decided, must be seen as a continuation of the substantive litigation and accordingly as part of a “determination of ... civil rights and obligations” (see *Robins v. the United Kingdom*, 23 September 1997, § 29, *Reports of Judgments and Decisions* 1997-V; *Rotaru v. Romania* [GC], no. 28341/95, § 78, ECHR 2000-V; *Macková v. Slovakia*, no. 51543/99, § 55, 29 March 2005; *Superwood Holdings Plc and Others v. Ireland*, no. 7812/04, § 29, 8 September 2011; *Pyrobatys A.S. Restrukturalizacii v. Slovakia* (dec.), no. 40050/06, § 59, 3 November 2011; and also, *mutatis mutandis*, *Stankiewicz v. Poland*, no. 46917/99, § 60, ECHR 2006-VI). Article 6 § 1 of the Convention is therefore applicable to the cost proceedings in the case.

26. The Court reiterates that it has held that for proceedings to be fair, as required by Article 6 § 1 of the Convention, the domestic courts must conduct a proper examination of the submissions, arguments and evidence adduced by the parties (see *Kraska v. Switzerland*, 19 April 1993, § 30, Series A no. 254-B; *Quadrelli v. Italy*, no. 28168/95, § 34, 11 January 2000; and *Stoyanova-Tsakova v. Bulgaria*, no. 17967/03, § 24, 25 June 2009). The Court has also held that while Article 6 guarantees the right to a fair hearing it does not lay down any rules on the admissibility of evidence as such,

which is primarily a matter for regulation under national law; the Court's role is thus to determine whether the proceedings as a whole were fair (see, *mutatis mutandis*, *Gäffen v. Germany* [GC], no. 22978/05, § 162, ECHR 2010).

27. In the present case the SCC refused to take into account evidence concerning the changes in the applicant company's particulars (see paragraphs 12-14 above). The Court must examine whether this refusal rendered the cost proceedings unfair.

28. The Court takes note of the SCC's interpretation of domestic law to the effect that a party which had failed to establish certain circumstances in the course of the main litigation could not make up for that failure in later proceedings under Article 192 § 4 of the Code of Civil Procedure, which only concerned an amendment of the main judgment in respect of costs (see paragraphs 14 and 16 above). It is not the Court's task to question the SCC's position, since it is in the first place for the national authorities, and notably the courts, to interpret domestic law (see, among many other authorities, *Van Kück v. Germany*, no. 35968/97, § 46, ECHR 2003-VII, and *Ajdarić v. Croatia*, no. 20883/09, § 32, 13 December 2011).

29. However, the Court considers that in the circumstances of the present case the application of this rule placed the applicant company in an unduly disadvantageous position. The Court notes, in the first place, that domestic law did not oblige a party to judicial proceedings to notify the respective court of changes of its particulars such as the transfer of its seat or the election of a new managing director. Under domestic law the applicant company was only obliged to indicate an address for service, which it did (see paragraphs 15 and 18 above). Furthermore, once the case was before it, the SCC accepted as valid an authority form presented before it by counsel for the applicant company signed by Askon AD based in Sofia and represented by the managing director elected in November 2003 (see paragraph 13 above). In the minutes of the hearing before the SCC of 14 June 2004 it was also noted that the party was Askon AD Sofia (see paragraph 11 above).

30. It thus appears that the applicant company could not have reasonably anticipated in advance that, having considered Askon AD based in Sofia and Askon AD based in Asenovgrad as one company for the purposes of legal representation and participation as a party to the main proceedings, the SCC would consider that the two were different companies in respect of the costs. It is also noteworthy in that respect that the "two" companies had the same registration and taxation numbers, which were indicated on several documents in the case file (see paragraph 13 above).

31. The Court notes that in these circumstances the applicant company could not have reasonably expected a refusal by the SCC to take a decision in respect of its costs on the grounds indicated in the preceding paragraph. Moreover, in so far as the SCC could have had doubts as to the applicant

company's identity, it could have verified the matter in publicly accessible registers containing data on companies, or sought, in the course of the proceedings, clarifications from the applicant company itself. However, the domestic court's doubts as to the applicant company's identity were only expressed in the reasoning of the final judgment in the case; this, coupled with the subsequent application of a procedural rule which, as construed by the SCC, barred examination of new evidence, deprived the applicant company of any possibility to refute the doubts concerning its identity.

32. The Court thus concludes that, taken together, the SCC's findings as to the applicant company's identity, coupled with its formalistic refusal to examine new evidence in the costs proceedings, as described in the two preceding paragraphs, rendered the costs proceedings unfair.

33. There has accordingly been a violation of Article 6 § 1 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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."

35. The applicant company claimed USD 485,313.84 in compensation for pecuniary damage, which included the amount it had claimed for costs before the SCC in the domestic proceedings (see paragraph 12 above), plus interest.

36. The applicant company did not make any claims in respect of non-pecuniary damage and costs and expenses for the proceedings before the Court.

37. The Government discerned no causal link between the violation alleged in the case and the claim for pecuniary damage.

38. The Court notes that in the present case an award for pecuniary damage can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 § 1 of the Convention. The Court cannot speculate as to the outcome of the proceedings had the situation been otherwise. Accordingly, the Court dismisses the applicant company's claim for pecuniary damage.

39. At the same time, the Court points out that a judgment in which it finds a violation of the Convention imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a

way as to restore as far as possible the situation existing before the breach (see, among other authorities, *Ilașcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 487, ECHR 2004-VII). In the case of a violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of this provision not been disregarded (see, among other authorities, *Lungoci v. Romania*, no. 62710/00, § 55, 26 January 2006).

40. The Court notes in this connection that Article 303 § 1(7) of the Code of Civil Procedure allows for the reopening of the domestic proceedings where the Court has found a violation of the Convention or its Protocols (see paragraph 19 above). Thus, the Court is of the view that the most appropriate form of redress in the case would be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial (see *Yanakiev*, cited above, § 90, and *Idakiev v. Bulgaria*, no. 33681/05, § 70, 21 June 2011).

#### FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Dismisses* the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 16 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Lech Garlicki  
President