



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

FIFTH SECTION

CASE OF BOYAN GOSPODINOV v. BULGARIA

(Application no. 28417/07)

JUDGMENT

STRASBOURG

5 April 2018

FINAL

10/09/2018

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 Boyan Gospodinov v. Bulgaria,

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

Angelika Nußberger, *President*,

Erik Møse,

Yonko Grozev,

Síofra O'Leary,

Mārtiņš Mits,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 March 2018,

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

PROCEDURE

1. The case originated in an application (no. 28417/07) 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, Mr Boyan Dobrinov Gospodinov ("the applicant"), on 3 May 2007.

2. The applicant was represented by Ms E. Syarova, a lawyer practising in Stara Zagora. The Bulgarian Government ("the Government") were represented by their Agent, Ms V. Hristova of the Ministry of Justice.

3. The applicant alleged, in particular, that his criminal case had not been assessed by an impartial tribunal in pursuance of Article 6 § 1 of the Convention.

4. On 9 January 2017 notice of that complaint was given to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Stara Zagora.

A. The first criminal proceedings against the applicant

6. On 18 August 2002 the police conducted a search of the applicant's home in Stara Zagora and discovered a certain quantity of cannabis. The applicant was arrested and placed in pre-trial detention on 30 August 2002. Criminal proceedings were brought against him.

7. By judgment of 22 May 2003 the Stara Zagora Regional Court found the applicant guilty of the unlawful possession of 14.44 grams of cannabis and sentenced him to three-and-a-half years' imprisonment. The court decided to deduct the time spent in pre-trial detention from the sentence.

8. The applicant appealed.

9. By judgment of 13 October 2003 the Plovdiv Court of Appeal set aside the aforementioned judgment and reduced the sentence to one year's imprisonment.

10. The applicant appealed on points of law.

11. By decision of 6 April 2004, at the request of counsel for the applicant, the Supreme Court of Cassation replaced the pre-trial detention with a straightforward judicial supervision measure (*nodnucka*) and ordered the applicant's release.

12. The applicant was released on 7 April 2004, having spent one year, seven months and eight days in pre-trial detention.

13. By judgment of 25 May 2004 the Supreme Court of Cassation upheld the judgment of the Court of Appeal.

B. Action for damages against the State

14. On 23 September 2004 the applicant filed with the Sofia City Court an action for damages based on section 2(6) of the Law on State Responsibility for Damages against the Stara Zagora Regional Court, the Plovdiv Court of Appeal, the Supreme Court of Cassation and the public prosecutor's office. In his statement of claim he submitted that the period of time which he had spent in pre-trial detention during the criminal proceedings against him had exceeded the length of the sentence imposed on him by the courts. He claimed 11,500 Bulgarian Lev (BGL) in respect of the pecuniary and non-pecuniary damage which he had sustained. An initial hearing was held on 30 November 2004 before the Sofia City Court.

15. At the hearing on 11 October 2005 the representative of the Plovdiv Court of Appeal, Judge N.D., presented a copy of the judgment delivered on 3 October 2005 by the Stara Zagora Regional Court (see paragraph 27 below), and invited the Sofia City Court to adjourn the civil case until the end of the second set of criminal proceedings against the applicant. He emphasised that the applicant's action for damages should be dismissed on account of that fresh conviction. Pursuant to Article 182 paragraph 1 (g) of the 1952 Code of Civil Procedure (CPC), the court allowed that request on

the grounds that the outcome of the second set of criminal proceedings might prove decisive for the outcome of the compensation proceedings.

16. Following an appeal lodged by the applicant, the civil compensation proceedings resumed in January 2006.

17. By judgment of 24 October 2006 the Sofia City Court dismissed the applicant's claims. The applicant appealed to the Sofia Court of Appeal.

18. On 10 July 2007 that court dismissed the applicant's appeal. It noted that at the end of the second set of criminal proceedings against him (see paragraphs 20-32 below) the applicant had been sentenced to three years' imprisonment and that that sentence had been combined with the prison sentence passed on him at the end of the first set of criminal proceedings. It further noted that the criminal courts had also deduced from the combined sentence the period of one year seven months which the applicant had spent in pre-trial detention during the first set of criminal proceedings, and found that therefore the length of the applicant's detention had not exceeded the sentence imposed on him.

19. An appeal on points of law lay against that judgment, but the applicant did not avail himself of that option.

C. Second set of criminal proceedings against the applicant

20. On 14 October 2004 the Stara Zagora regional prosecutor's office drew up a formal indictment against the applicant and committed him for trial before the Stara Zagora Regional Court for narcotics trafficking during the period from 21 March 2000 to 14 March 2002.

21. At the hearing on 18 October 2004 counsel for the applicant requested the transfer of the case to another regional court. She alleged that the judges of the Stara Zagora Regional Court were not impartial, on the grounds that their court was a respondent in the framework of the action for damages brought by the applicant (see paragraph 14 above).

22. That request was dismissed by the trial court as ill-founded, on the following grounds: "as regards the formal indictment presented, there is information to the effect that that indictment was received in the Sofia City Court on 29 September 2004, and there is no information to suggest that civil proceedings have been formally commenced by the court of first instance". The trial court further held that there had been no evidence of bias on the part of any of the two professional judges and the three lay judges sitting in the trial court, who had not been involved in the first set of criminal proceedings against the applicant.

23. Nevertheless, the President of the trial court, who was also acting as Judge Rapporteur, decided to withdraw from the case on the grounds that he had sat on the trial bench which had previously convicted the applicant (see paragraphs 6-13 above). The hearing was adjourned to enable the defence to acquaint itself with the case file and the indictment.

24. In his written observations of 21 October and 8 November 2004 in reply to the indictment, the applicant repeated his argument concerning the alleged bias on the part of all the regional court judges and requested their collective withdrawal and the assignment of the case to another court. He submitted that it had been in judges' interest to give him a prison sentence in order to prevent a finding against their court in the framework of the compensation proceedings before the Sofia City Court.

25. At the 10 January 2005 hearing counsel for the applicant called once again for the withdrawal of all the regional court judges and the assignment of the case to another court of the same level of jurisdiction. That request was dismissed on the following grounds: none of the lawful reasons for the withdrawal of judges set out in Article 25 of the Code of Criminal Procedure had been established in the present case; there was no evidence of bias on the part of the trial court judges, the case had been examined by a different court whose impartiality was unchallenged and the regional court had no means of influencing the outcome of the respective proceedings; and in any event, an appeal lay against the regional court's future decision in that criminal case.

26. The regional court examined the criminal case of drug-trafficking between 10 January and 3 October 2005. It gathered material evidence and heard a number of experts and prosecution and defence witnesses. The court refused to summon two defence witnesses and to put specific questions to the prosecution witnesses as being irrelevant to the establishment of the facts.

27. By judgment of 3 October 2005, the regional court found the applicant guilty of the unlawful purchase, possession and sale of a certain quantity of cannabis between March 2000 and March 2002, and sentenced him to sixteen year' imprisonment. The court decided to combine that sentence with that imposed at the end of the first set of criminal proceedings and to deduct the period spent in pre-trial detention between 2002 and 2004.

28. On 17 October 2005 the applicant appealed to the Plovdiv Court of Appeal against the regional court's judgment. On several subsequent occasions his lawyer filed additional observations complaining of various procedural shortcomings on the part of the regional court and the investigating authorities and contesting that court's factual and legal findings. In her observations of 18 January 2006 counsel for the applicant complained of bias on the part of the judges of the court of first instance, *inter alia* on account of that court's refusal to transmit the case file to another court for assessment.

29. The Plovdiv Court of Appeal examined the criminal case in a public hearing held on 23 January 2005. Counsel for the applicant did not request the withdrawal of the appeal court judges. That court heard a witness and accepted new written evidence presented by the defence. In her pleadings counsel complained, in particular, of the insufficiency of the evidence to

convict the applicant, called for her client's acquittal and, in the alternative, sought the referral of the case to the lower-level court on grounds of procedural shortcomings.

30. By judgment of 25 January 2006 the court of appeal set aside the regional court's judgment. It excluded some evidence as being in breach of defence rights, and two statements given during the preliminary investigation which the court of first instance had taken into account. It considered, however, that the other evidence gathered had confirmed that the applicant had been involved in cannabis trafficking, and found no other breach of the applicant's procedural rights. The court sentenced him to ten years' imprisonment and upheld the part of the regional court's decision relating to the combination of sentences and the deduction of the time spent in pre-trial detention.

31. The applicant lodged an appeal on points of law. His lawyer submitted, *inter alia*, that the appellate court had not addressed the allegation of bias on the part of the court of first instance.

32. By judgment of 16 November 2006 the Supreme Court of Cassation set aside the 25 January 2006 judgment of the Plovdiv Court of Appeal, reduced the applicant's sentence to three years' imprisonment, combined the latter with the sentence imposed during the first set of criminal proceedings and deducted the period spent in pre-trial detention during the first set of criminal proceedings. Accordingly, the applicant only had in fact to serve a seventeen-month prison sentence.

II. RELEVANT DOMESTIC LAW

33. Article 25 of the 1974 Code of Criminal Procedure, which was in force until April 2006, listed the grounds of withdrawal of a criminal judge from a case, including his or her participation in the same case as a civil party, prosecutor, investigator, witness or expert, or the existence of kinship between a judge and one of the aforementioned persons or with another judge sitting in the trial court. Pursuant to Article 25 § 9, such judge was required to withdraw from the case under any other circumstance liable to jeopardise his or her impartiality.

34. In pursuance of Article 36 of the same code, the Supreme Court of Cassation could decide to refer a criminal case for consideration to another court of the same level of jurisdiction where the competent court was no longer capable of constituting a trial court. Such a scenario could arise if all the judges of the competent court withdrew (*Определение № 19 от 25.II.1991 г. на ВС по ч. н. д. № 80/91 г., III н. о., Бюлетин на ВС на РБ, кн. 5/1991 г., стр. 11*).

35. Article 23 of the Penal Code provides for the concurrent running of sentences in cases of the actual or notional coincidence of two or more

criminal offences. In such cases the competent court must impose the heaviest sentence on the convicted person.

36. Pursuant to Article 59 of the Penal Code, with a view to enforcing prison sentences, time spent by the convicted person in pre-trial detention must be deducted from the sentence determined by the courts.

37. Pursuant to section 2(6) of the Law on State Responsibility for Damages, the State's civil liability may be incurred in cases of imprisonment for a period longer than that determined by the courts, where that imprisonment is the result of actions or omissions on the part of the courts, the public prosecutor's office or the criminal investigation agencies.

38. Pursuant to section 196(1) of the 1994 Law on the Judiciary as in force at the material time, the judiciary has its own separate budget established by the Higher Council of the Judiciary and adopted by the National Assembly.

39. The Higher Council of the Judiciary was primarily responsible for managing and supervising the budget for the whole judicial system. Judicial authorities having legal personality, such as the courts, were also responsible for managing their own specific budgets.

40. Article 399 § 2 of the Code of Criminal Procedure in force at the material time and now repealed, provided that persons with a public-law claim against the public authorities should transmit the writ of execution to the finance department of the authority in question in order to obtain payment. Payments were effected from appropriations earmarked for the purpose in the authority's budget. Where no funds were available, a budget line had to be opened for the purpose for the following year.

THE LAW

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

41. The applicant complained that his second criminal case had not been examined by an impartial tribunal. He relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

“In the determination ...of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

43. The applicant submitted that in the framework of the first set of criminal proceedings against him for drug-trafficking he had been placed in pre-trial detention and had remained in detention for one year, seven months and eight days, whereas, at the end of the proceedings, he had been sentenced to only one year's imprisonment.

44. He had therefore brought an action for damages under section 2(6) of the Law on State Responsibility against the three courts which had examined that criminal case. He stated that alongside those civil proceedings, a second set of criminal proceedings for drug-trafficking had been brought against him before the same court of first instance against which he had brought his action. He therefore considered that it had been in the interests of the judges of the court of first instance to convict him a second time of similar offences and to combine the two sentences passed after both sets of criminal proceedings in order to exonerate their court from any responsibility in the framework of the compensation proceedings. Furthermore, his request to have his criminal case transferred to another court of the same judicial level with different territorial jurisdiction had been dismissed, and he had received a heavy sentence.

45. The applicant alleged that the judges of the court of appeal who had examined his appeal against that conviction had been equally biased, because, in his view, an acquittal would have inevitably led to a finding against the court in question in the framework of the compensation proceedings. Moreover, the appellate court's representative in the compensation proceedings had been particularly active and had requested and obtained the adjournment of that proceedings until the end of the second set of criminal proceedings against him.

46. The applicant also submitted that his action against the Supreme Court of Cassation had cast doubt on the impartiality of that court's judges.

47. He considered that all those circumstances had been sufficient to cast doubt on the impartiality of the judges who had examined the second criminal case against him, which had thus amounted to a violation of Article 6 § 1 of the Convention.

(b) The Government

48. The Government contested the applicant's arguments. They considered that the criminal case in issue had been examined by impartial tribunals in accordance with Article 6 § 1 of the Convention.

49. They pointed out that under the Court's constant case-law, two tests should be used to assess the impartiality of judges: firstly, a subjective test

focusing on the personal conviction and behaviour of a particular judge, and secondly, an objective test, ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality (see *Micallef v. Malta* [GC], no. 17056/06, § 93, ECHR 2009). The Government added that in connection with the objective test, the decisive factor was not so much the standpoint of the accused, but rather the question whether his or her fears could be deemed objectively justified (see *Parlov-Tkalčić v. Croatia*, no. 24810/06, § 80, 22 December 2009).

50. The Government explained that the same impartiality criteria had been reprised in the provisions of the Code of Criminal Procedure governing challenges to and withdrawal of judges. In considering a request for the withdrawal of one or more judges, the trial court had to give a reasoned decision, which took on especial importance where the court had to ascertain the existence of possible bias.

51. The Government pointed out that in the present case the applicant had requested the withdrawal of the judges of the Stara Zagora Regional Court and that that request had been duly considered by the trial court. They submitted that the Judge Rapporteur had been challenged under the “subjective test” approach. On the other hand, the trial court had noted no objective evidence such as to call into question the impartiality of the other judges called upon to adjudicate on the merits of that criminal case.

52. The Government considered that the criminal case against the applicant had been duly examined by the courts, which had had regard to all the relevant circumstances of the case in order to find the applicant guilty and sentence him as prescribed by law. They considered that from that angle the criminal judges had in no way been influenced by the civil compensation proceedings brought by the applicant against various legal persons, that is to say the Stara Zagora Regional Court, the Plovdiv Court of Appeal and the Supreme Court of Cassation, where they had discharged their duties.

2. The Court’s assessment

(a) General principles

53. The Court laid down a number of principles relating to the examination of the impartiality of judges, as enshrined in Article 6 of the Convention, in its judgment in the case of *Kyprianou v. Cyprus* [GC], no. 73797/01, §§ 118-121, ECHR 2005-XIII. Those principles can be summarised as follows. Impartiality denotes the absence of prejudice or bias, and its existence must be determined according to two types of test: a subjective one seeking to determine the personal conviction or interest of a particular judge in a given case, and an objective test ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in

this respect. As regards the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance. It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether that fear can be held to be objectively justified.

b) Application of those principles to the present case

54. The Court observes that the instant case raises no issues of subjective impartiality. It will therefore address the question of the impartiality of the criminal judges in the present case in the light of the objective test (see paragraph 53 above).

55. The Court notes that the Stara Zagora Regional Court examined the second criminal case against the applicant while a civil action for damages which had been brought by the applicant against that same court was pending before the Sofia City Court (see paragraphs 20-27 and 14-17 above). It also observes that the latter court agreed to adjourn the compensation proceedings until the end of the second set of criminal proceedings against the applicant on the grounds that the latter might prove decisive for the outcome of the dispute (see paragraph 15 above). Under those circumstances, even though there is no reason to doubt the personal impartiality of the criminal judges of the Stara Zagora Regional Court, and notwithstanding the fact that four of the members of that court's trial bench had not taken part in the assessment of the previous criminal proceedings against the applicant (see paragraphs 22 and 23 above), their professional connection with one of the parties to the concurrently running civil proceedings, combined with the detrimental effect on the compensation proceedings of the criminal proceedings against the applicant, could, on its own, have prompted legitimate misgivings in the applicant as regards the judges' objective impartiality.

56. Furthermore, under the budgetary rules relevant to the present case, any compensation awarded to the applicant in the event of the success of his action for damages would have been paid from the budget of the Stara Zagora Regional Court (see paragraphs 38-40 above). Even though it has not been established that that fact had in any way influenced the individual situation of the court's judges, it might legitimately have intensified the applicant's doubts.

57. The Court further observes that domestic law required judges to withdraw from a criminal case if there was any doubt about their impartiality (see paragraph 33 above). In particular, under Article 25 § 9 of the version of the CCP in force at the material time, judges could be

expected to withdraw from a case on the basis of any circumstance potentially casting doubt on their impartiality, even in cases not explicitly mentioned in that article (*ibid.*). Domestic law also provided a mechanism for assigning a criminal case to another court of the same level of jurisdiction where the competent court was unable to constitute a trial bench because of the withdrawal of all its judges (see paragraph 34 above).

58. In the present case, the applicant requested the withdrawal of all the judges of the Stara Zagora Regional Court and the transfer of the criminal case to another court of the same level of jurisdiction, but his request was dismissed on purely formal grounds without any thorough consideration of the arguments in support of such a transfer (see paragraphs 21-25 above). The applicant raised the issue of bias on the part of the criminal judges of Stara Zagora Regional Court before two higher authorities, that is to say the Plovdiv Court of Appeal and the Supreme Court of Cassation (see paragraphs 28 and 31 above), which were themselves respondents in the framework of the same civil compensation proceedings. The fact is that neither of those higher courts replied to the applicant's submissions (see paragraphs 30 and 32 above). Thus they failed to dispel the legitimate doubt as to the bias on the part of the court of first instance.

59. Having regard to these observations, the Court considers that the Stara Zagora Regional Court, which examined the second criminal case brought against the applicant at first instance, did not fulfil the requirements of objective impartiality. The higher-level courts had not redressed the infringement of that safeguard on the fairness of criminal proceedings, since they had declined to quash the first-instance decision and in so doing had upheld the applicant's conviction (see *Kyprianou*, cited above, § 134, and *De Cubber v. Belgium*, 26 October 1984, § 33, Series A no. 86). The Court therefore holds that it is not necessary to examine the applicant's other pleas (see paragraphs 45 and 46 above).

60. The foregoing considerations are sufficient to enable the Court to conclude that there was a violation of Article 6 § 1 of the Convention on the grounds that the second criminal case against the applicant was not assessed by an impartial tribunal.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 25,000 euros (EUR) in respect of pecuniary damage.

63. The Government considered that claim excessive.

64. The Court considers that the applicant sustained pecuniary damage on account of the fact that the proceedings against him were not assessed by an impartial tribunal. It holds that he should be awarded a sum of EUR 3,600 in respect of pecuniary damage.

B. Costs and expenses

65. The applicant also claimed BGN 4,046 (equal to EUR 2068.68) for the costs and expenses incurred before the Court.

66. The Government considered that claim exaggerated and unjustified, and disputed, in particular, the number of hours of legal work on the application declared by counsel for the applicant.

67. 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 documents in its possession and to the above criteria, the Court considers it reasonable to award the sum of EUR 1,500 in respect of the proceedings before it Court.

C. Default interest

68. 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 application admissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *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, the following amounts, to be converted into Bulgarian Lev, at the rate applicable at the date of settlement:

(i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred 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 claim for just satisfaction.

Done in French, and notified in writing on 5 April 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Angelika Nußberger
President