CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF I.D. v. BULGARIA

(Application no. 43578/98)

JUDGMENT

STRASBOURG

28 April 2005

FINAL

28/07/2005

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 I.D. v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 31 March 2005,

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

PROCEDURE

1. The case originated in an application (no. 43578/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Ms I.D. ("the applicant"), on 15 May 1998. The President of the Chamber acceded to the applicant's request not to have her name disclosed (Rule 47 § 3 of the Rules of Court).

2. The applicant was represented by Mr Y. Grozev, 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 alleged that the courts of all levels refused to consider her claim for damages on its merits. She submitted that by accepting the findings of the relevant medical commissions as binding, the courts had not considered the other evidence adduced by her.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 18 March 2004 the Court (First Section) joined to the merits the Government's objection of non-exhaustion of domestic remedies and declared the application admissible.

7. Neither the applicant, nor the Government have filed observations on the merits.

8. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1948 and lives in Rouse.

A. The applicant's employment

10. In 1976 the applicant started working for the Cargo Railway Station in Rouse and until 1989 she formally occupied the positions of dormitories supervisor and facilities and social activities co-ordinator. In fact, throughout this period the applicant was working – under the instructions of her manager – as a typist at the local section of the Bulgarian Communist Party. This scheme had apparently been devised because the staff tables did not provide for a typist position.

11. Accordingly, the applicant's employment agreements and job descriptions did not mention her actual duties, which included mostly typewriting. This arrangement was apparently never called into question by the applicant or her employer.

12. Between 1989 and 1996 the applicant worked as an inspector at the human resources department of the Station.

13. In late December 1995 or in early January 1996 the applicant's employer, acting pursuant to a medical recommendation on the nature of work she was fit to perform, moved her to a different position – internal mail carrier.

B. The applicant's disease and her examinations by the special medical commissions

14. In 1979 the applicant started experiencing pain in her hands and arms. Initially she was losing the sensitivity in her fingers and could not hold objects. With the passage of time the pain got stronger and her hands started to swell and tremble, especially after long periods of typing.

15. In December 1994 the applicant was examined by the Diagnostic Expert Commission (“the DEC”) at the Rouse Regional Hospital. In a decision of 15 December 1994 the DEC found that the applicant was suffering from vegetative polyneuropathy of the upper limbs, a disease

which features on the Table of Occupational Diseases. However, the DEC, relying solely on the applicant's job descriptions, concluded that the positions she had occupied (dormitories supervisor, facilities and social activities co-ordinator) did not entail increased strain on her upper limbs. Accordingly, it qualified her disease as non-occupational, finding no causal link between the conditions of work and the disease. Apparently the DEC refused to examine evidence (including affidavits) submitted by the applicant to prove her actual duties.

16. The applicant appealed to the Central Diagnostic Expert Commission ("the CDEC"), arguing that her *de facto* duties were different from the ones enumerated in her job descriptions. As no witness testimony was admissible, she again submitted affidavits from her managers to the effect that she had actually worked as a typist. On 15 March 1995 the CDEC dismissed the appeal, fully endorsing the reasons of the DEC. Apparently it refused to take into account any other evidence purporting to establish the actual duties of the applicant.

17. In October 1995 the applicant was admitted for treatment at the Medical Institute for Transport Workers in Sofia. On 19 December 1995 the DEC at the Institute examined the applicant and found that she suffered from *osteohondrosis cervicalis*. It also reached the conclusion that the disease was not an occupational one, being unrelated to the duties of the applicant as set out in her job descriptions.

18. The applicant appealed against this decision to the CDEC. By a decision of 13 February 1996 it upheld the ruling as to the non-occupational character of the applicant's disease and fully endorsed the DEC's reasons.

C. The action for damages against the applicant's employer

19. On 19 March 1996 the applicant brought an action against her employer under Article 200 of the Labour Code of 1986. She alleged that the disease of her hands had developed as a result of her work. In fact, between 1976 and 1989 she had worked as a typist, even though her job descriptions did not reflect that. The rulings of the DEC and the CDEC that her disease was not work-related were based solely on these job descriptions; the commissions had not inquired into the reality of the situation. She requested the court to summon witnesses to testify about her real duties and to appoint an expert to establish the occupational character of her disease.

20. Two witnesses – former managers of the applicant – testified during the trial. They stated that the applicant had in fact worked as a typist, in accordance with the orders of her employer, and provided details about her workload.

21. Two expert witnesses were appointed by the court to give conclusions about the applicant's state of health and about the occupational

or non-occupational character of her disease. The first expert concluded that the applicant was suffering from vegetative neuropathy of the hands. The second expert submitted a report in which she stated that the cause for the applicant's disease could be her conditions of work, as described by her managers. Both experts confirmed their conclusions at a public hearing on 23 October 1996.

22. The Rouse District Court gave judgment on 30 October 1996, dismissing the applicant's action. It stated, *inter alia*:

> "... the court considers the action to be ill-founded. The prerequisites for finding the employer liable under Article 200 of the Labour Code ... are a valid employment agreement and a convincingly established occupational disease. The occupational character of the disease is determined by the special medical commissions ... The existence of a finding [made by the DEC and ascertaining the occupational character of the disease] is an absolute precondition for holding the employer liable under Article 200 of the Labour Code. The specific character of the [subject-matter of the inquiry] has led the legislature to establish specialised medical bodies to give a conclusion as to the type [of the disease] and as to the causal link between the conditions of work and the disease. In the case at hand the [DEC and the CDEC] have concluded that the [applicant's] disease was not occupational and was not related to her conditions of work ... [T]he court examining the dispute under Article 200 of the Labour Code may rule as to the occupational character of the disease only if no medical documents have been issued by the [DEC]."

23. The applicant appealed to the Rouse Regional Court. On 27 December 1996 that court upheld the lower court's judgment in the following terms:

> "The [District Court's] judgment is well-founded. After assessing the collected and relevant evidence, the District Court correctly concluded that the occupational character of the [applicant's] disease, ... which is one of the prerequisites for holding her employer liable under Article 200 of the Labour Code, has not been convincingly established. The first-instance court has correctly decided that the occupational character of the disease may be established by the court only if no documents have been issued by the specialised medical bodies ... The District Court has taken into account that in the case at hand these bodies have reached the categorical conclusion ... that the disease of the [applicant] was not related to her working conditions and was thus not occupational."

24. The applicant lodged a petition for review with the Supreme Court. That court dismissed the petition in a final judgment of 18 November 1997. It held:

> "The acts issued by the specialised medical bodies indicate that [the applicant's] disease was not occupational, i.e. no causal link was found between the disease and the working conditions. The expert witnesses' conclusions do not alter this finding. The [first expert] concluded that the disease "vegetative polyneuropathy of the hands" features on the table of occupational diseases. This fact is not at issue, but the [employer's] liability under Article 200 of the Labour Code presupposes not only the existence of the respective disease, but also the establishment of a causal link between the disease and the conditions of work. This causal link has not been established by the [second] expert either. In her report she found that activities related to type-writing are a prerequisite for the development of vegetative polyneuropathy. However, the

fact that type-writing is in general a prerequisite for this disease does not prove the existence of a causal link between the [applicant's] conditions of work and [her] disease.

...The specialised medical bodies are the administrative organs empowered by law to ascertain the existence of an occupational disease and the causal link between the disease and the [conditions of] work. The [lower] courts correctly held that the circumstances that [these organs] are authorised to examine may be examined by the court having cognisance of the action under Article 200 of the Labour Code only in the absence of findings made by these organs. The [applicant] has not established before the specialised medical bodies the existence of a causal link between [her] disease and the conditions of work as a typist ... Therefore the conclusions of the [lower] courts that her action is unfounded are correct."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Liability of employers for damage to employees resulting from occupational diseases

25. Article 200 of the Labour Code of 1986, which regulates the liability of the employer toward the employee for damage which has occurred as a result of an occupational accident or disease, reads as follows:

Article 200
Liability of the employer in cases of death or harm to the health of the employee

"1. The employer shall be liable for damage [resulting from] an occupational accident or disease which has caused a temporary or permanent disability or death of the employee, irrespective of whether it has been brought about through fault [of the employer] or of another employee.

...

3. The employer shall owe compensation amounting to the difference between the quantum of the damage – pecuniary and non-pecuniary, including lost profits, – and the [amount of the] benefits and/or pension [provided to the employee] by the social security."

B. Occupational diseases

26. At the relevant time occupational diseases were defined by Regulation No. 23 of the Minister of Health (State Gazette ("SG"), issue 5 of 1985, amended, SG, issues 34 and 87 of 1994) and by the Table of Occupational Diseases (SG, issue 5 of 1958, amended, SG, issue 18 of 1964 and issue 61 of 1974). The Regulation defined occupational diseases as

"impairments of the health arising exclusively or predominantly from the harmful factors of the conditions of work or of the work process and which have been listed in the Table of Occupational Diseases" (section 1(1)). The Table listed the diseases, the conditions of work causing them, and the types of work in the performance of which they could occur. For a disease to be regarded as occupational, it had to (a) be listed in the Table; (b) stem from the exposure to certain dangerous conditions of work (e.g. noise, vibrations, radiation), exhaustively enumerated in the Table; and (c) the types of work (e.g. typist, miner, driver) involving exposure to these conditions had to be enumerated in the Table, the enumeration not being exhaustive.

C. The DECs and the CDEC

27. The DECs and the CDEC were established by the above-mentioned Regulation No. 23 under the authority of the Minister of Health.

The DECs were responsible for determining the occupational character of a disease (section 9(1) of the Regulation). Their members were appointed by the medical directors of the respective hospitals (section 9(5) of the Regulation).

The CDEC heard appeals against decisions of the DECs; its members were appointed by the Minister of Health (section 13a(2) of the Regulation). The findings of the CDEC in respect of the occupational character of the disease were binding on other medical bodies dealing with occupational expertise issues (section 14(3) of the Regulation), but the Regulation did not provide that they were binding on the courts.

28. The members of the commissions – who were exclusively medical professionals – were remunerated under private-law service contracts with the Ministry of Health (sections 9(3), 13a(1) and (4) of the Regulation).

29. There were no detailed rules regulating the procedure before the commissions. The Regulation provided only that they had to proceed on the basis of an examination of the person concerned and of medical documents (section 12 of the Regulation), making no provision for witness testimony or other evidence. No hearings were held.

D. Judicial review of administrative acts

1. Relevant constitutional and statutory provisions

30. Article 120 of the Constitution provides:

> "1. The courts shall review the lawfulness of the administration's acts and decisions.
>
> 2. Physical and legal persons shall have the right to seek judicial review of any administrative act or decision which affects them, save in the cases expressly specified by statute."

31. The Administrative Procedure Act ("the APA") governs the procedure for issuing "administrative acts" and for judicial review of such acts. Section 2(1) of the Act defines "individual administrative acts" as "acts issued [by public authorities], which create rights or obligations for, or affect rights or legitimate interests of, individuals or legal entities, as well as the refusals to issue such acts". By sections 33 and 34 of the Act, all "administrative acts", save those relating to the security of the country or specifically enumerated by statute, are subject to judicial review. The application for judicial review must be lodged within a specified time-limit, which varies depending on whether the "administrative act" was an express act or a tacit refusal and on whether before being appealed against before a court it was appealed against before a higher administrative authority (section 37(1), read in conjunction with sections 22, 29 and 31 of the Act). Only if it is alleged that the "administrative act" is null and void, the application for judicial review is not limited by time (section 37(2) of the Act).

2. Judgment no. 21 of 1995 of the Constitutional Court

32. In its interpretative judgment no. 21 of 26 October 1995 in constitutional case no. 18/1995 (SG, issue 99 of 1995) the Constitutional Court gave a binding interpretation of Article 120 § 2 of the Constitution. It held, *inter alia*, that that Article's provision encompassed all administrative acts regardless of their character or theoretical qualification. The exclusion of a given administrative act from judicial review could only be done by statute. "All administrative acts" meant "without exception". Only internal acts which did not affect in any way physical or legal persons outside the respective administration were not covered by the constitutional provision.

3. Case-law of the former Supreme Court and of the Supreme Administrative Court

33. The former Supreme Court has held that the decisions of the special medical commissions were not "administrative acts" within the meaning of the APA, which could be appealed against before a court, but rulings of special bodies subject only to a hierarchical appeal within the respective administration (опред. № 304 от 1 юли 1992 г., ВС, III г.о.).

34. In a series of decisions and judgments starting with a reported decision of 4 February 1999 in which it quashed a decision of the Sofia City Court declaring an appeal against the decision of a special medical commission inadmissible, the Supreme Administrative Court, which succeeded the Supreme Court after the reform of 1997, started allowing judicial appeals against the decisions of special medical commissions. In contrast with the holding of the former Supreme Court, it held that the commissions' decisions were affecting the rights of the persons examined

and were therefore "administrative acts" within the meaning of the APA. The general rule under Article 120 § 2 of the Constitution being that administrative acts were subject to judicial review unless otherwise provided by statute, the commissions' decisions were appealable before a court. In a number of those decisions and judgments the court also relied on Article 6 of the Convention and, in particular, its "access to a court" requirement (опред. № 1580 от 4 февруари 1999 г. по адм. д. № 4869/1998 г., ВАС, I о.; опред. № 4491 от 6 август 1999 г. по адм. д. № 937/1999 г., ВАС, I о.; опред. № 446 от 1 февруари 2000 г. по адм. д. № 3513/1999 г., ВАС, I о.; опред. № 3450 от 30 май 2000 г. по адм. д. № 7347/1999 г, ВАС, I о.; реш. № 351 от 25 януари 2001 г. по адм. д. № 5358/2000 г., ВАС, I о.; реш. № 6475 от 3 юли 2002 г. по адм. д. № 2611/2002 г., ВАС, петчленен състав).

THE LAW

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

35. The applicant complained under Article 6 § 1 of the Convention that when examining her action for damages against her employer, the courts of all levels had refused to consider her claim on its merits. She submitted that by accepting the findings of the medical commissions as binding on them, the courts had not considered the other evidence adduced by her. She alleged that this was inconsistent with Bulgarian law and maintained that as a result she had been denied effective access to a court.

36. Article 6 § 1 of the Convention provides, as relevant:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. The Government's objection of non-exhaustion of domestic remedies

37. The Government maintained that the applicant had failed to exhaust domestic remedies. In particular, they stated that she had not appealed to a court against CDEC's decision of 13 February 1996. That decision had been an "individual administrative act" within the meaning of section 2(1) of the APA and had been, therefore, appealable to a court. Moreover, by Article 120 § 2 of the Constitution private persons could appeal to a court against all administrative acts which affected their rights, save those expressly excluded from such appeal by statute. When interpreting this constitutional provision in 1995, the Constitutional Court had held that it

encompassed all administrative acts regardless of their character or theoretical qualification. That court's ruling was binding on all State authorities, including the Supreme (Administrative) Court. The Government referred to a number of decisions of the Supreme Administrative Court from the period 1999-2002 which confirmed the position that the decisions of the CDEC were "individual administrative acts" subject to appeal before the courts. They submitted that by contrast the Supreme Court's decision of 1 July 1992 relied upon by the applicant had been an isolated occurrence and had no jurisprudential value.

38. The applicant replied that she had in fact exhausted domestic remedies. She submitted that at the outset she could choose between appealing against the CDEC's decision or directly filing an action for damages against her employer. However, in 1996, when she had to make that choice, neither alternative seemed more promising than the other. Had she chosen to appeal, she would have had to rely on Article 120 of the Constitution or Article 6 of the Convention to persuade the domestic courts to change their then established case-law. Had she chosen to directly file an action for damages, as she had in fact done, she could try to adduce evidence to directly prove the occupational character of her disease. The advantage of this approach was that it saved her one set of proceedings, while in the same time presenting the same chances for success: the courts examining the action for damages could have relied on the principles underlying Article 120 of the Constitution and Article 6 of the Convention and could have examined all factual issues relevant to her claim. Having chosen one set of judicial proceedings over another, the applicant was not required to embark on a second attempt.

39. In its admissibility decision in the present case the Court found that the question of exhaustion of domestic remedies was closely linked to the merits of the case. It consequently decided to join the Government's objection to the merits (see paragraph 6 above). Accordingly, the Court will now examine the Government's objection jointly with the merits of the applicant's complaint.

B. Merits of the complaint

40. The Government submitted that the occupational character of the applicant's disease could be proved in proceedings for damages under Article 200 of the Labour Code. Indeed, when the applicant had brought such proceedings, the courts had examined the merits of her action and had based their judgments on all the evidence gathered during the trial.

41. In the Government's view, the applicant's interpretation of the Rouse District Court's reasoning was erroneous. In fact, that court had not stated that the existence of a finding by the special medical commissions that the applicant's disease was an occupational one was an absolute prerequisite for

finding her employer liable under Article 200 of the Labour Code. Neither had it treated the decisions of the special medical commissions as binding. On the contrary, the court had considered these decisions as mere pieces of evidence. On the other hand, the applicant had had the opportunity to prove the work-related character of her disease: the court had admitted all evidence – including expert reports – requested by her. However, this evidence, including the medical expert reports requested by the applicant, had been insufficient for the court to conclude that her disease had been an occupational one. The court had thus not refused to examine the merits of the applicant's action; it had, however, found that it had not been sufficiently substantiated. The applicant had failed to use all available options to corroborate her allegations. For instance, she had not contested the findings of the special medical commissions. Also, since the expert reports requested by her had not categorically established the existence of a causal link between her conditions of work and her disease, she could have challenged the accuracy of the reports, asked the experts additional questions, requested a new expert report, or called additional witnesses.

42. The applicant considered that the Government's averment that the courts had examined her action on the merits was not supported by the facts of the case. The courts' judgments rejecting her action had in fact been based on their holding that they were bound by the findings of the special medical commissions.

43. In the view of the applicant, she had been denied access to a court having full jurisdiction over all issues of fact and law relevant to the determination of her claim. She maintained that neither the Rouse District Court, nor the Rouse Regional Court or the Supreme Court, had given adequate reasons for rejecting her action. In particular, the Rouse District Court, whose reasoning had been fully endorsed by the appellate instances, had not explained in detail why it had considered that the existence of a causal link between the applicant's conditions of work and her disease had not been established. However, this was the central issue of the case. The courts' attitude could only be explained by their view that they were bound by the findings of the special medical commissions.

44. The Court notes at the outset that it is not contested that the dispute relating to the claim for damages against the applicant's employer concerned private-law relations. It was thus a civil dispute for the purposes of Article 6 § 1 of the Convention, which provision is therefore applicable.

45. The Court reiterates that for the determination of civil rights and obligations by a tribunal to satisfy Article 6 § 1, the tribunal in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (see *Terra Woningen B.V. v. the Netherlands*, judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, pp. 2122-23, § 52, and, more recently, *Chevrol v. France* [GC], no. 49636/99, § 77, ECHR 2003-III).

46. The Court notes that, when examining the applicant's action for damages against her employer, the domestic courts of all levels held, as is apparent from their reasoning, that they were precluded from conducting their own examination of the causal link between the applicant's conditions of work and her disease and were not free to determine its occupational or non-occupational character after it had been declared not work-related by the special medical commissions (see paragraphs 22, 23 and 24 above). As this was an essential element of the applicant's case, her claim was therefore disallowed.

47. Such holdings of the domestic courts – that they were bound by the findings of an administrative body made in separate proceedings – have already been examined by the Court in the cases of *Obermeier v. Austria* (judgment of 28 June 1990, Series A no. 179) and *Terra Woningen B.V.* (cited above). Both cases were examined by the Court under the "access to a court" requirement of Article 6 § 1.

48. In *Obermeier* the Court found a violation of Article 6 § 1 because the Austrian courts had considered themselves bound by the ruling of an administrative agency in respect of a preliminary issue in the case before them. They had been thus precluded from inquiring into a fact relevant to the determination of the dispute which they had to resolve. The Court held that in these circumstances no issue would arise under Article 6 § 1 only if the administrative agency's ruling binding the courts had been delivered in conformity with that Article's requirements. It noted that under Austrian law it had been possible to appeal against the agency's ruling to an administrative court and an appeal had indeed been lodged. However, the administrative court's scope of review was insufficient as it could only control whether the discretion enjoyed by the agency had been used in a manner compatible with the object and the purpose of the law (see *Obermeier*, cited above, pp. 22-23, §§ 69-70).

49. In *Terra Woningen B.V.* Article 6 § 1 had been breached in that a Dutch court had declined to examine a fact which had been decisive for the outcome of the litigation – the existence of soil pollution. It had considered the ruling of the administrative authorities that a further inspection of the soil was needed as conclusive for the existence of pollution, without examining the issue independently (see *Terra Woningen B.V.*, cited above, pp. 2122-23, §§ 52-55).

50. The case at hand is very similar. As noted above, the domestic courts examining the applicant's action did not themselves assess a fact which was crucial for the determination of the case and instead chose to defer to the findings of an administrative body (see paragraph 46 above). They thus deprived themselves of jurisdiction to examine all questions of fact and law relevant to the dispute before them, as required by Article 6 § 1.

51. It follows that the conditions laid down in Article 6 § 1 are met only if the decisions of the special medical commissions, which were considered

as binding by the courts in the case at hand, were delivered in conformity with the requirements of that provision.

52. In this connection, the Court finds that the commissions themselves cannot be considered as a tribunal conforming to the requirements of Article 6 § 1. According to the Court's case-law, a tribunal within the meaning of that provision must satisfy a series of requirements – independence, in particular of the executive, impartiality, duration of its members' terms of office, and guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 itself (see *Belilos v. Switzerland*, judgment of 29 April 1988, Series A no. 132, p. 29, § 64, *Demicoli v. Malta*, judgment of 27 August 1991, Series A no. 210, p. 18, § 39, and *Cyprus v. Turkey* [GC], no. 25781/94, § 233, ECHR 2001-IV). In the present case, as regards structural guarantees, the Court notes that the commissions were under the authority of the Minister of Health (see paragraph 27 above). Furthermore, their members were remunerated under service contracts with the Ministry of Health and did not have tenure (see paragraph 28 above). As regards procedural guarantees, it appears that the commissions had no clear rules of procedure (see *H v. Belgium*, judgment of 30 November 1987, Series A no. 127-B, p. 35, § 53), did not hold public hearings, and decided solely on the basis of a medical examination of the person concerned and of medical documents (see paragraph 29 above). They cannot therefore be regarded as tribunals within the meaning of Article 6 § 1.

53. The Court must also examine whether the decisions of these commissions were subject to appeal before a court having full jurisdiction, because, if that was the case, no issue would arise under Article 6 § 1 (see *Obermeier*, cited above, p. 23, § 70, and *British American Tobacco Company Ltd v. the Netherlands*, judgment of 20 November 1995, Series A no. 331, pp. 25-26, § 78).

54. The Government submitted, referring to a judgment of the Constitutional Court of 1995, that under the Bulgarian law – in particular Article 120 of the Constitution – it had been possible to appeal against the decisions of the CDEC (see paragraph 37 above). However, the Court considers that the existence of a remedy must be sufficiently certain, failing which it will lack the accessibility and effectiveness required for the purposes of Article 6. There is no requirement that remedies that are neither adequate nor effective should be used (see, *mutatis mutandis*, *Sakık and Others v. Turkey*, judgment of 26 November 1997, *Reports* 1997-VII, p. 2625, § 53). Furthermore, for the right of access to a court to be effective, an individual must have a clear, practical opportunity to challenge an act which is an interference with his or her rights (see *De Geouffre de la Pradelle v. France*, judgment of 16 December 1992, Series A no. 253-B, p. 43, § 34, and *Bellet v. France*, judgment of 4 December 1995, Series A no. 333-B, p. 42, § 36). With regard to the instant case, the Court notes that the former Supreme Court refused to allow the examination of judicial

appeals against the decisions of special medical commissions (see paragraph 33 above). On the other hand, the Government have not furnished any example – and the Court is not aware of – a judicial decision confirming that a person was able to appeal against a decision of the CDEC during the period in issue in the present case (1995-96). All judgments and decisions of the Supreme Administrative Court which the Government produced in support of their averment date from the period 1999-2002. The first reported case in which the Supreme Administrative Court overturned the refusal of a lower court to accept for examination an appeal against a decision of a special medical commission dates from 4 February 1999, and it seems that it set a new trend in that court's case-law (see paragraph 34 above). In these circumstances, the Court cannot find it established that at the relevant time the applicant could have obtained judicial review of the two decisions of the CDEC which concerned her and which were later considered as binding by the courts examining her action for damages.

55. For the foregoing reasons, the Court dismisses the Government's objection of non-exhaustion of domestic remedies and holds that there has been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The applicant claimed 8,000 euros (EUR) as compensation for the non-pecuniary damage which she had sustained. She submitted that she suffered from a serious disease and that it was very difficult for her to find a job. It had been thus very important for her to have her claim examined on its merits and to possibly receive the compensation which the courts would have probably awarded her. The courts' refusal to do so had caused her strong emotional suffering.

58. The Government did not comment on the applicant's claim.

59. The Court considers that the applicant has undoubtedly sustained a moral prejudice on account of the violation found in the present case (see *Kutić v. Croatia*, no. 48778/99, § 39, ECHR 2002-II, and *Silvester's Horeca Service v. Belgium*, no. 47650/99, § 38, 4 March 2004). Consequently, ruling on an equitable basis, the Court awards the applicant EUR 3,000, plus any tax that may be chargeable on this amount.

B. Costs and expenses

60. The applicant sought reimbursement of her lawyer's fees related to the proceedings before the Court. In particular, she claimed EUR 3,200 for 64 hours of legal work, at the hourly rate of EUR 50. The applicant submitted a fees' agreement between her and her lawyer and a time-sheet.

61. The Government did not comment on the applicant's claim.

62. Having regard to all relevant factors and deducting EUR 685 received in legal aid from the Council of Europe, the Court awards the applicant EUR 1,500 in respect of costs and expenses, plus any tax that may be chargeable on this amount.

C. Default interest

63. The Court considers it appropriate that the default interest 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. *Dismisses* the Government's objection of non-exhaustion of domestic remedies and *holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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;

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

Done in English, and notified in writing on 28 April 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN Registrar	Christos ROZAKIS President