CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF MIHAILOV v. BULGARIA

(Application no. 52367/99)

JUDGMENT

STRASBOURG

21 July 2005

FINAL

21/10/2005

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 Mihailov v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. QUESADA, *Deputy Section Registrar*,

Having deliberated in private on 30 June 2005,

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

PROCEDURE

1. The case originated in an application (no. 52367/99) 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 Mr Boris Kostov Mihailov, a Bulgarian national who was born in 1933 and lived in Sofia ("the applicant"), on 17 June 1999. The applicant died on 16 April 2001. On 21 October 2003 his son and daugther and only heirs, Mr Kostik Borisov Mihailov and Ms Eleonora Borisova Mihailova, Bulgarian nationals born in 1957 and 1961 respectively and living in Sofia, expressed the wish to continue the proceedings before the Court on the applicant's behalf.

2. The applicant and subsequently his heirs were represented by Mr P. Bogoev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Pasheva, of the Ministry of Justice.

3. The applicant alleged that the Supreme Administrative Court had refused to examine his appeal against a special medical commission's decision to deny him the status of a first degree disabled.

4. 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.

5. By a decision of 9 September 2004 the Court (First Section) decided to reject the Government's request that the application be struck out of the list of cases and declared the application admissible.

6. Neither the applicant's heirs, nor the Government filed observations on the merits.

7. 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

8. In a decision of 27 November 1989 the Labour-Expert Medical Commission ("the LEMC" – see paragraph 19 below) specialised in pulmonary diseases diagnosed the applicant as suffering from asbestosis and various other diseases and determined that he qualified for second-degree disability. From that point on the applicant was undergoing biannual medical examinations at the LEMC, and each time his diagnosis and degree of disability were confirmed.

9. Apparently due to a deterioration of the applicant's health, in a decision of 9 December 1997 the competent LEMC revised his disability to first-degree, without the need for another person's assistance. Later, on 21 May 1998, another LEMC decided that the applicant qualified for first-degree disability in need of another person's assistance.

10. The chief expert at the Central Labour-Expert Medical Commission ("the CLEMC" – see paragraph 19 below) at the Ministry of Health appealed against the latter decision. On 18 June 1998 the CLEMC overturned the LEMC's decisions of 9 December 1997 and 21 May 1998 and the applicant's disability status was set back to second-degree.

11. The applicant lodged an appeal against this decision with the Supreme Administrative Court.

12. On 6 October 1998 a three-member panel of the court declared the applicant's appeal inadmissible. It held that the appealed decision was not subject to judicial review, in accordance with section 23(c) of the Implementing Regulations of the Labour Code of 1951, section 29a of Regulation no. 36 of the Minister of Health, and section 11(2) of the Implementing Regulations of the Pensions Act (see paragraph 22 below).

13. The applicant appealed to a five-member panel of the Supreme Administrative Court, arguing that the refusal of the three-member panel to examine the appeal was contrary to Article 120 § 2 of the Constitution and Article 6 of the Convention. He submitted that the CLEMC's determination directly affected the amount of disability pension that was allotted to him.

14. The five-member panel upheld the three-member panel's decision in a final decision of 1 March 1999, holding that under section 23(c) of the

Implementing Regulations of the Labour Code of 1951 the CLEMC's decisions were final and not subject to judicial review.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Degrees of disability

15. Under Bulgarian law, as it stood at the relevant time, there existed three degrees of disability, differentiated according to the character and the course of the disabling illness, the functional status of the ailing organ and of the organism as a whole, and the requirements of the disabled's profession (section 46(1) of Regulation no. 36 on the expert assessment of long-lasting incapacity to work, issued by the Minister of Health in 1975 and superseded in July 2000 by a newer statutory instrument). The first degree of disability was reserved for persons who had, due to their state of health, lost all ability for work, or persons with durable, incurable, or worsening ailments set forth in a special list (section 52 of the Regulation); the second one covered persons who had lost the ability to perform theirs or any other work, but who could be accommodated for work under conditions suitable for their health, or persons with durable, incurable, or worsening ailments set forth in the above list (section 54 of the Regulation); and the third one covered persons who, as a result of their state of health, had to change their profession with one requiring lower qualifications, or who had to change their conditions of work within the same profession (section 55 of the Regulation). If a person was disabled on account of several illnesses, the decision determining his or her disability status had to set forth his or her degree of disability pursuant to each of the separate illnesses, as well as the overall degree of disability (section 50 of the Regulation).

16. Persons with a first-degree disability were divided in two subcategories: those who needed another person's assistance, and those who did not. The determination who was in need of such assistance was made on the basis of the findings about that person's need of everyday care, help or supervision (section 53 of the Regulation).

B. Pension rights of the disabled

17. Section 17 of the Pensions Act of 1957, as in force at the material time, provided that the amount of the professional disability pension was to be set pursuant to the degree of disability: those under the first degree were entitled to 70% of their average earnings, those under the second degree to 55%, and those under the third degree to 35%. The amount of the general disability pension was to be likewise set pursuant to the degree of disability: 55%, 40% and 25% respectively (section 20 of the Pensions Act of 1957).

18. Persons with a first-degree disability in need of another person's assistance were entitled, in addition to the pension they received, to a further 75% of the amount of the social pension (section 46(2) of the Pensions Act of 1957).

C. The LEMCs and the CLEMC

19. The LEMCs and the CLEMC were established pursuant to the above-mentioned Regulation no. 36 under the authority of the Minister of Health (sections 2 and 23 of the Regulation). The LEMCs were responsible for, *inter alia*, determining the degree of a person's disability (section 13 of the Regulation). The CLEMC heard appeals against decisions of the LEMCs (section 21 of the Regulation).

20. The presidents and the members of the commissions, who were exclusively medical professionals (section 7a(5) of the Regulation), were remunerated under employment contracts they entered into with the local mayors, the Minister of Health, or the medical directors of the local hospitals (section 7a(2) and (3) of the Regulation).

21. There were no written rules regulating the procedure before the commissions. Regulation no. 36 provided only that they had to proceed on the basis of an examination of the person concerned and of medical documents, making no provision for witness testimony or other evidence. No hearings were held.

D. Judicial review of the decisions of the LEMCs and the CLEMC

22. By Article 120 § 2 of the Constitution, all "administrative acts" are subject to judicial review, unless otherwise provided by statute. Section 2 of the Administrative Procedure Act ("the APA") 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 APA, all "administrative acts", save those relating to the security of the country or specifically enumerated by statute, are subject to judicial review.

23. Section 23(c) of the Implementing Regulations of the Labour Code of 1951 provided that the CLEMC's decisions pursuant to appeals by the disabled or the administration were final. So did section 29a of the above-mentioned Regulation no. 36 and section 11(2) of the Implementing Regulations of the Pensions Act.

24. In contrast to the previous practice, 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 started allowing judicial appeals against the decisions of special medical commissions. It reasoned that the general rule under Article 120 § 2 of the Constitution was that administrative acts were subject to judicial review unless otherwise provided by statute. The commissions' decisions affected the individuals' rights and were thus administrative acts within the meaning of Article 120 § 2 of the Constitution and section 2 of the APA. Since the exclusion of judicial review of the commissions' decisions was set out in statutory instruments, it was invalid and their decisions were appealable before a court. In a number of those judgments and decisions the court also relied on Article 6 § 1 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. № 6475 от 3 юли 2002 г. по адм. д. № 2611/2002 г., ВАС, петчленен състав).

25. At present section 112(1)(4) of the Health Act of 2004 provides that the decisions of the National Expert Medical Commission (the successor body of the CLEMC) are reviewable by the Sofia City Court.

THE LAW

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

26. The applicant complained under Article 6 § 1 of the Convention that the Supreme Administrative Court had refused to examine his appeal against the CLEMC's decision to deny him the status of a first-degree disabled.

27. Article 6 § 1 provides, as relevant:

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

A. The submissions of the parties

28. The Government confined their comments to stating that the application was manifestly ill-founded.

29. The applicant's heirs submitted that the CLEMC's decision was decisive for the applicant's right to a pension, the amount of which was directly dependent on his degree of disability, and for his right to a supplement to his pension, which was also dependent on the CLEMC's

determination whether he was in need of another person's assistance. Referring to the cases of *Feldbrugge v. the Netherlands* (judgment of 29 May 1986, Series A no. 99), *Deumeland v. Germany* (judgment of 29 May 1986, Series A no. 100) and *Francesco Lombardo v. Italy* (judgment of 26 November 1992, Series A no. 249-A), the applicant's heirs submitted that social security rights which were not the result of a discretionary decision by a state authority but were determined on the basis of criteria contained in the law, such as those in issue in the present case, were civil rights within the meaning of Article 6 of the Convention.

30. The applicant's heirs further argued that the medical commissions could not be deemed a tribunal within the meaning of Article 6 § 1, because they were regulated by a statutory instrument – Regulation no. 36 of the Minister of Health and were part of the executive. The presidents of the LEMCs were appointed by the mayors or by the Minister of Health and the members of the LEMCs were appointed by the medical directors of the respective hospitals. The CLEMC was under the authority of the Minister of Health and was presided by a director appointed by the Minister of Health.

31. Furthermore, the proceedings before the commissions were not attended by the guarantees of judicial procedure. In particular, they could gather evidence of their own motion. The CLEMC could decide solely on the basis of medical documents, without even examining the person whose degree of disability was being determined. Also, the commissions did not hold hearings. They carried out a medical examination of the person and allowed him or her to present medical documents, but did not allow him or her to adduce arguments with a view to influencing their decision. Therefore, the only possible way for a person examined by the commissions to obtain the benefit of the guarantees of Article 6 § 1 was to appeal against the commissions' decisions to a court. However, the Supreme Administrative Court had expressly refused to examine the appeal against the CLEMC's decision, thus depriving the applicant of access to a judicial procedure. This refusal had not only been contrary to the Convention, but also to domestic law, because Article 120 § 2 of the Constitution allowed limitations of the right to seek judicial review of administrative action only if these had been provided for by statute, whereas in the case at hand the Supreme Administrative Court had grounded its refusal on two statutory instruments – the Implementing Regulations of the Labour Code of 1951 and Regulation no. 36 of the Minister of Health.

32. Finally, the applicant's heirs submitted that the Supreme Administrative Court's refusal to examine the applicant's appeal had also been contrary to another international treaty to which Bulgaria was a signatory – the International Labour Organisation's Invalidity Insurance (Industry, etc.) Convention (No. 37), to which Bulgaria had been a party since 1950.

B. The Court's assessment

33. The Court reiterates at the outset that it is not its function to deal with errors of law allegedly committed by a national court (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Nor is it competent to review the Contracting Parties' compliance with instruments other than the European Convention on Human Rights and its Protocols, even if other international treaties may provide it with a source of inspiration (see *Zehnalová and Zehnal v. the Czech Republic* (dec.), no. 38621/97, ECHR 2002-V). Its jurisdiction in the present proceedings is confined to determining whether the situation obtaining in the case at hand discloses a violation of the Convention and, more specifically, of Article 6 § 1 thereof.

1. Applicability of Article 6 § 1

34. The first issue which needs to be examined by the Court is whether Article 6 § 1 is applicable. It must therefore determine whether the CLEMC's decision to deny the applicant first-degree disability status was decisive for a civil right of his. In this connection, the Court notes that under Bulgarian law, as in force at the material time, the amount of a disabled's pension was directly dependent on the degree of his or her disability (see paragraph 17 above). Moreover, a person would be entitled to a supplement to his or her pension depending on whether he or she was deemed a disabled in need of another person's assistance or not (see paragraph 18 above). It could thus be concluded that the CLEMC's determination, with which the applicant disagreed, was directly decisive for the rights in issue. This was also the view of the Supreme Administrative Court, expressed in a series of decisions and judgments delivered in 1999-2002 (see paragraph 24 above). Furthermore, the Court notes that this determination was made on the basis of specific criteria contained in the law and that the CLEMC apparently had no discretion in this respect (see paragraphs 15 and 16 above). It is also beyond doubt that the pension and the related benefits, which were purely economic in nature, were civil rights within the meaning of Article 6 § 1 (see *Francesco Lombardo*, cited above, pp. 26-27, § 17, *Schuler-Zgraggen v. Switzerland*, judgment of 24 June 1993, Series A no. 263, p. 17, § 46, and *Massa v. Italy*, judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26). It follows that Article 6 § 1 is applicable.

2. Compliance with Article 6 § 1

35. Under Article 6 § 1 it is necessary that, in the determination of civil rights and obligations, decisions taken by administrative authorities which do not themselves satisfy the requirements of that Article be subject to subsequent control by a judicial body that has full jurisdiction (see *Fischer v. Austria*, judgment of 26 April 1995, Series A no. 312, p. 17, § 28).

36. The Court must therefore first ascertain whether the medical commissions – the LEMC and the CLEMC – could be considered as tribunals conforming to the requirements of Article 6 § 1.

37. According to the Court's settled 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 case at hand, as regards structural guarantees, the Court notes that the commissions were under the authority of the Minister of Health (see paragraph 19 above), and their presidents and members were remunerated under employment contracts with the respective municipalities or the Ministry of Health and did not have tenure (see paragraph 20 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 21 above). For these reasons, they cannot be regarded as tribunals within the meaning of Article 6 § 1.

38. Therefore, in order for the obtaining situation to be in compliance with Article 6 § 1, the commissions' decisions should have been subject to review by a judicial body having full jurisdiction. However, the Court notes that the Supreme Administrative Court expressly refused to examine the applicant's appeal against the decision of the CLEMC of 18 June 1998, grounding its refusal on the provisions of several statutory instruments, which apparently excluded judicial review of such decisions (see paragraphs 12, 14 and 22 above). Neither that court in its reasoning, nor the Government in their observations, sought to justify this restriction on the applicant's right of access to a court, which impaired the very essence of that right. It is noteworthy in this connection that only a month later the Supreme Administrative Court changed its case-law and started examining such appeals, relying, *inter alia*, on Article 6 § 1 (see paragraph 23 above).

39. There has therefore been a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant's heirs claimed 5,000 euros (EUR) as compensation for the non-pecuniary damage the applicant had sustained as a result of the violation of Article 6 § 1. They submitted that if the applicant had been classified as a first-degree disabled, under the relevant law, he would have been entitled to a higher pension and related benefits. However, he had been denied the possibility to argue his case and protect his interests before a court with full jurisdiction, which had been particularly traumatic in view of what was at stake for him in the proceedings.

42. The Government did not comment.

43. The Court considers that the applicant 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). Consequently, ruling on an equitable basis, the Court awards the applicant EUR 2,000, plus any tax that may be chargeable on this amount, to be paid to his son and daughter, Mr Kostik Borisov Mihailov and Ms Eleonora Borisova Mihailova, who continued the proceedings in the applicant's stead.

B. Costs and expenses

44. The applicant's heirs claimed EUR 950 for nineteen hours of legal work on the Strasbourg proceedings, at the hourly rate of EUR 50. They submitted a fees' agreement between them and their lawyer and a time-sheet.

45. The Government did not comment.

46. Having regard to all relevant factors, the Court awards the amount claimed in full.

C. Default interest

47. 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. *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's heirs, Mr Kostik Borisov Mihailov and Ms Eleonora Borisova Mihailova, 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 at the date of settlement:
      (i) EUR 2,000 (two thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 950 (nine hundred fifty 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 21 July 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago QUESADA
Deputy Registrar

Christos ROZAKIS
President