



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

FIFTH SECTION

CASE OF NALBANTOVA v. BULGARIA

(Application no. 38106/02)

JUDGMENT

STRASBOURG

27 September 2007

FINAL

27/12/2007

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 Nalbantova v. Bulgaria,

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

Mr P. LORENZEN, *President*,

Mrs S. BOTOCHAROVA,

Mr K. JUNGWIERT,

Mr R. MARUSTE,

Mr J. BORREGO BORREGO,

Mrs R. JAEGER,

Mr M. VILLIGER, *judges*,

and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 4 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 38106/02) 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, Mrs Todorka Petrova Nalbantova (“the applicant”) who was born in 1950 and lives in Plovdiv, on 3 October 2002.

2. The applicant was represented by Mr M. Neikov and Mr Z. Zahariev, lawyers practising in Plovdiv.

3. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

4. On 14 December 2005 the Court decided to give notice of the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

A. The criminal proceedings

5. In 1991 part of the production facilities of the cooperative “Maritza” were spun off and the cooperative “Rodina” (“the cooperative”) was established. The applicant was appointed to be its executive officer.

6. On unspecified dates, a tax audit was performed of the activities of the cooperative for the period from June 1991 to June 1992, which established that certain funds were missing.

7. On 15 February 1993 a preliminary investigation was opened against the applicant for embezzlement and failure to exercise supervision over the activities of subordinates responsible for managing and accounting of funds, which resulted in the cooperative suffering losses in the amount of 14,587 old Bulgarian leva (approximately 918 German marks on that date).

8. On 16 January, 9 April and 8 August 1994 the Plovdiv District Prosecutor's Office sent reminders to the investigator in charge of the case to conclude the investigation as quickly as possible because the period for its completion had long since expired.

9. On 21 May 1997 the Plovdiv Regional Prosecutor's Office requested the case file from the investigator, which it obtained on an unspecified date. It established that, in spite of the express instructions to that effect, absolutely no investigative procedures had been conducted in the case. The Plovdiv Regional Prosecutor's Office remitted the case on 1 July 1997.

10. Five witnesses were questioned on 22 and 23 February 2000.

11. On 2 March 2000 the applicant was questioned and charged with embezzlement and failure to exercise supervision over the activities of subordinates responsible for managing and accounting of funds, which resulted in the cooperative suffering losses in the amount of 14,587 old Bulgarian leva (approximately 7 euros on that date). A restriction was also imposed on her not to leave her place of residence without the authorisation of the Prosecutor's Office.

12. Another ten witnesses were questioned between 6 March and 16 April 2000, an accounting expert's report was commissioned on 22 May 2000 and the applicant was further questioned on 20 and 26 June 2000.

13. The case file was then forwarded to the Plovdiv Regional Prosecutor's Office, which on 3 November 2000 remitted the case with instructions for further investigative procedures to be conducted.

14. Another witness was questioned on 12 December 2000 and a supplementary accounting expert's report was commissioned on the 27th.

15. On 12 April 2001 the charges against the applicant were amended and she was again questioned.

16. On 19 February 2002 the Plovdiv District Prosecutor's Office requested the case file from the investigator, which it obtained on an unspecified date

17. On 27 March 2002 the Plovdiv Regional Prosecutor's Office again remitted the case with further instructions for concluding the investigation.

18. On 16 April 2002 the cooperative joined the criminal proceedings against the applicant as a civil claimant.

19. The findings of the investigation were presented to the applicant on 29 April 2002, which were then forwarded to the Plovdiv Regional Prosecutor's Office on an unspecified date.

20. In a decision of 11 May 2002 the Plovdiv Regional Prosecutor's Office terminated the criminal proceedings against the applicant due to lack of sufficient evidence of an offence.

B. Relevant domestic law and practice

21. The relevant part of the State and Municipalities Responsibility for Damage Act of 1988 (the "SMRDA" : title changed in 2006) provided that the State was liable for damage caused to private persons by the organs of the investigation, the prosecution and the courts for, *inter alia*, having unlawfully charged a private person with an offence if the initiated criminal proceedings were terminated because the deed was not perpetrated by the said person or the perpetrated deed was not an offence (section 2 (2)).

22. Persons seeking redress for damage occasioned by decisions of the investigating and prosecuting authorities or the courts in circumstances falling within the scope of the SMRDA have no claim under general tort law as the Act is a *lex specialis* and excludes the application of the general regime (section 8 (1) of the Act; решение № 1370 от 16.XII.1992 г. по гр.д. № 1181/92 г., IV г.о. and Тълкувателно решение № 3 от 22.04.2005 г. по т. гр. д. № 3/2004 г., ОСТК на ВКС).

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 and 13 OF THE CONVENTION

23. The applicant complained that the length of the criminal proceedings against her was incompatible with the "reasonable time" requirement, laid

down in Article 6 § 1 of the Convention, and that she lacked an effective remedy to speed them up.

The relevant part of Article 6 § 1 of the Convention provides as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

Article 13 of the Convention provides as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Period to be taken into consideration

24. The Court finds that the period to be taken into consideration lasted from 15 February 1993 to 11 May 2002, a period of nine years, two months and twenty six days, during which time the criminal proceedings remained at the stage of the preliminary investigation.

B. Admissibility

25. The Government submitted that the applicant failed to exhaust the available domestic remedies because she did not initiate an action for damages under the SMRDA. They noted that the criminal proceedings had been terminated on 11 May 2002 due to lack of sufficient evidence of an offence. The Government claimed, therefore, that the applicant had a right of action under the SMRDA to seek redress from the authorities for having been unlawfully charged with an offence. In support of their assertion they presented a number of domestic court judgments where the domestic courts had awarded damages on such grounds.

26. The applicant disagreed and noted that under the SMRDA she could only have sought damage for having been unlawfully charged with an offence and not in respect of the length of the criminal proceedings as such. She noted in this respect that the Government had failed to present a single judgment where the domestic courts had awarded damages for such an alleged violation of Article 6 § 1 of the Convention. Accordingly, she submitted that the SMRDA did not provide a remedy that had to be exhausted in respect of her complaint currently before the Court.

27. The Court finds that the question of exhaustion of domestic remedies partly relates to the merits of the applicant's complaint under Article 13 of the Convention that she lacked an effective remedy in respect of the length of the criminal proceedings against her. Therefore, to avoid prejudging the latter, both questions should be examined together. Accordingly, the Court holds that the question of exhaustion of domestic remedies should be joined to the merits.

28. The Court further finds that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. Complaint under Article 6 § 1 of the Convention regarding the alleged excessive length of the criminal proceedings

29. The Government did not submit observations on the merits of the applicant's complaint. The applicant reiterated her complaint.

30. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

31. Having examined all the material before it and noting the Government's failure to submit observations on the merits of the complaint, the Court finds that no facts or arguments capable of persuading it that the length of the criminal proceedings in the present case was reasonable have been put forward. Thus, having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. In particular, the criminal proceedings against the applicant lasted over nine years and remained at the stage of the preliminary investigation for the whole duration (see paragraph 24 above). Notably, the first investigative procedures were conducted only on 22 February 2000 (see paragraph 10 above) – more than seven years after the preliminary investigation had been opened on 15 February 1993 (see paragraph 7 above)

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

2. Complaint under Article 13 in conjunction with Article 6 § 1 of the Convention regarding the alleged lack of effective remedies

32. The Government did not submit observations on the merits of the applicant's complaint other than in the context of their preliminary objection (see paragraph 25 above). The applicant reiterated her complaint.

33. The Court reiterates that Article 13 of the Convention guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 of the Convention to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

34. The Court notes that in similar cases against Bulgaria it has found that at the relevant time there was no formal remedy under Bulgarian law that could have expedited the determination of the criminal charges against the applicant (see *Osmanov and Yuseinov v. Bulgaria*, nos. 54178/00 and 59901/00, §§ 38-42, 23 September 2004; and *Sidjimov v. Bulgaria*, no. 55057/00, § 41, 27 January 2005). The Court sees no reason to reach a different conclusion in the present case.

35. As to the Government's preliminary objection, the Court observes that they submitted that the applicant failed to exhaust an available domestic remedy under the SMRDA and referred to the existing possibility therein to obtain redress for having been unlawfully charged with an offence. They did not, however, indicate how that would have remedied the complaint currently before this Court in respect of the alleged excessive length of the criminal proceedings. Moreover, the Government failed to present copies of domestic court judgments where awards had been made under the SMRDA providing redress for excessive length of criminal proceedings. In view of the aforesaid, the Court does not find it proven by the Government that in the circumstances of the present case an action under the SMRDA would have provided for an enforceable right to compensation which could be considered an effective, sufficient and accessible remedy in respect of the applicant's complaint in respect of the alleged excessive length of the criminal proceedings (see, likewise, *Osmanov and Yuseinov*, cited above, §41; and *Sidjimov*, cited above, § 42).

36. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention. It follows that the Government's preliminary objection (see paragraphs 25-27 above) must be dismissed.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicant claimed 5,000 euros (EUR) as compensation for the non-pecuniary damage arising out of the violation of her rights under the Convention.

39. The Government did not express an opinion on the matter.

40. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the protraction of the criminal proceedings against her for over nine years. Having regard to its case-law in similar cases and deciding on an equitable basis, the Court awards EUR 4,600 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

41. The applicant also claimed EUR 1,000 for the legal work by her lawyers on the proceedings before the Court and EUR 100 for unspecified expenses. No supporting documents were presented.

42. The Government did not express an opinion on the matter.

43. The Court notes that the claim is not supported by any evidence, such as a legal fees agreement or timesheet. It must therefore be rejected.

C. Default interest

44. 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. *Decides* to join to the merits the question of the exhaustion of domestic remedies;
2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant;
4. *Holds* that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, on account of the lack of an effective remedy for the excessive length of the criminal proceedings and accordingly *dismisses* the Government's preliminary objection based on non-exhaustion of domestic remedies;
5. *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, EUR 4,600 (four thousand six hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 27 September 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President