



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

FOURTH SECTION

CASE OF NIKOLAY DIMITROV v. BULGARIA (No. 2)

(Application no. 30544/06)

JUDGMENT

STRASBOURG

8 January 2013

This judgment is final but it may be subject to editorial revision.

In the case of Nikolay Dimitrov v. Bulgaria (no.2),

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

Päivi Hirvelä, *President*,

Zdravka Kalaydjieva,

Paul Mahoney, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 4 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 30544/06) 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 Nikolay Ivanov Dimitrov (“the applicant”), on 26 April 2006.

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

3. On 19 May 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Silistra.

A. The criminal proceedings against the applicant

5. On 3 September 1997 the applicant was charged with fraud.

6. Between 3 September and 12 December 1997 he was in custody.

7. On 27 March 2000 the Silistra Regional Court found him guilty as charged and sentenced him to five years’ imprisonment.

8. On 12 October 2000 the Varna Court of Appeal quashed the conviction and remitted the case for further investigation.

9. On 31 October 2002 the prosecuting authorities terminated the proceedings as it had not been established that the applicant had committed a criminal offence.

B. The proceedings under the State and Municipalities Responsibility for Damage Act

10. On 4 December 2002 the applicant brought an action for damages under the State and Municipalities Responsibility for Damage Act (“the SMRDA”). He initially sought 60,000 Bulgarian leva (BGN), later reduced to BGN 40,000 (equivalent to 20,450 euros (EUR)), in non-pecuniary damages stemming from his pre-trial detention and the criminal proceedings against him.

11. On 27 October 2003 the Dobrich Regional Court found that compensation was due under section 2(2) SMRDA as it had not been established that the applicant had committed a criminal offence. It awarded the applicant BGN 6,000 (EUR 3,067) in non-pecuniary damages.

12. On 6 April 2004 the Varna Court of Appeal upheld the judgment.

13. In a final judgment of 28 October 2005 the Supreme Court of Cassation increased the amount of damages awarded to BGN 9,000 (EUR 4,601).

14. The courts further applied section 10 § 2 of the SMRDA and ordered the applicant to pay in total BGN 2,480 (EUR 1,268) in court fees, which represented 4% of the dismissed part of his claim.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of the SMRDA in respect of the court fees are summarised in paragraphs §§ 19-21 of the Court’s judgment in the case of *Stankov v. Bulgaria*, no. 68490/01, 12 July 2007.

16. Following that judgment, the SMRDA was amended with effect from 30 May 2008, introducing, in the new section 9a, a simple court fee, irrespective of the amount of the claim.

THE LAW

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

17. The applicant complained that the application of the court fees’ system under the SMRDA in his case had resulted in a disproportionate restriction of his right to access to court. He relied on Articles 5 § 5, 6 § 1 and 13 of the Convention.

18. Having regard to the nature and the substance of the applicant’s complaint, the Court considers that its proper legal characterisation is Article 6 § 1 of the Convention, which reads, in so far as relevant:

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

A. Admissibility

19. 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

20. The Government acknowledged that the amount of the court fee imposed on the applicant had been relatively high. However, they submitted that unlike *Stankov*, cited above, the compensation received by the applicant in the instant case had been real and adequate to the damage he had sustained. They further noted that the payment of the court fee had not been a condition for examining the applicant's claim but it had only been imposed after the court had adjudicated the case and therefore did not amount to a restriction to the applicant's right to access to court.

21. The applicant disagreed.

22. Article 6 § 1 secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way, that provision embodies the “right to a court”, of which the right of access, that is the right to institute proceedings before a court in civil matters, is one aspect. The “right to a court” is not absolute. By its very nature it calls for regulation by the State. Contracting States enjoy a certain margin of appreciation in that respect but the ultimate decision as to the observance of the Convention's requirements rests with the Court (see *Mihalkov v. Bulgaria*, no. 67719/01, § 55, 10 April 2008, with further references).

23. The Court has already found that the imposition of a considerable financial burden due after the conclusion of the proceedings may act as a restriction on the right to a court (see *Stankov*, § 54, and *Mihalkov*, § 57, both cited above, and *Tzvyatkov v. Bulgaria*, no. 20594/02, § 26, 12 June 2008). In the instant case, in view of the amount of the court fee compared with the compensation awarded to the applicant, the Court is satisfied that the costs order against him did constitute such a restriction.

24. A restriction affecting the right to a court will not be compatible with Article 6 § 1 unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved (see *Mihalkov*, cited above, § 58).

25. The aims pursued by the general rules on costs can be accepted as compatible with the general administration of justice, for example to fund

the functioning of the judicial system and to act as a deterrent to frivolous claims. The aim pursued by the special regulation of claims under the SMRDA is apparently to simplify proceedings for such actions by not requiring plaintiffs to provide the full amount of 4% of the claim in advance, but only imposing it once quantum has been fixed. That aim, too, can be accepted as compatible with Article 6 of the Convention (see *Stankov*, cited above, § 57).

26. As to the proportionality of the interference, the Court notes that in the above cases the Court found a violation of Article 6 § 1 in that, despite the fact that it had been very difficult for the applicants to assess in advance what sum to claim in respect of non-pecuniary damage, they had been subject to an automatic and *post hoc* liability for court fees on the dismissed part of their claims and as a result had lost the entire or a significant portion of the compensation awarded (see, for example, *Mihalkov*, cited above, § 63). The Court finds that the present case is similar to those cases. In particular, it notes that the applicant cannot be criticised for having made an unreasonable or exorbitant claim because there does not appear to have been developed or accessible case-law on awards of non-pecuniary damages in similar cases (*ibid.*, § 61). On the other hand, the inflexible system of court fees left no room for judicial discretion in their determination. As a result, almost one third of the compensation the State was ordered to pay to the applicant was taken back by the treasury. This situation, which was likely to dissuade victims from bringing proceedings against the State or from requesting enforcement of judgments in their favour, could hardly be seen as a reasonable restriction of the applicant's right to access to court. The fact that unlike *Stankov*, the applicant in this case did not lose the entire compensation, was due to a chance and therefore cannot lead the Court to a different conclusion. The Court notes that since *Stankov*, the court fees system in question has been abandoned in Bulgaria and replaced, in cases concerning claims for damages against State or municipal bodies, by a simple fee not dependent on the value of the claim (see paragraph 16 above).

27. The foregoing considerations lead the Court to the conclusion that although the imposition of court fees is an aim which is compatible as such with the good administration of justice, the practical difficulties in assessing the likely award under the SMRDA, taken together with the relatively high and wholly inflexible rate of court fees, amounted to a restriction on the applicant's right to a court which was disproportionate to the otherwise legitimate aim.

28. There has been, therefore, a breach of Article 6 § 1 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

29. The applicant complained that the proceedings under the SMRDA had been unfair in that the domestic courts had awarded him insufficient compensation, without assessing properly the damage sustained by him. He also complained that the length of those proceedings and of the criminal proceedings against him had been unreasonable.

30. The Court examined the remainder of the applicant's complaints as submitted by him. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

31. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed repayment of the amounts he had incurred in court fees in the proceedings under the SMRDA plus interest (BGN 3,215.34) (equivalent to 1,650 euros (EUR)). In support of his claim he presented a statement of the National Revenue Agency. He also claimed EUR 3,500 in respect of non-pecuniary damage.

34. The Government contested the claim for non-pecuniary damages. They submitted that if the Court was to award just satisfaction, it should only consider the applicant's claim for pecuniary damages.

35. The Court considers that the applicant is entitled to recover the sums he has incurred in court fees, by reason of their direct link with breach found in his case (see, *mutatis mutandis*, *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 50, ECHR 2003-XI). It further notes that he must have sustained non-pecuniary damage as a result of the breach of his rights found in the case. Taking into account all the circumstances of the case, and deciding on an equitable basis, it awards the applicant EUR 2,500 under this head.

B. Costs and expenses

36. The applicant made no claim for costs and expenses.

C. Default interest rate

37. 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 complaint under Article 6 § 1 of the Convention concerning the court fees in the compensation proceedings admissible and the remainder of the application inadmissible;
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, EUR 2,500 (two thousand five hundred euros), to be converted into Bulgarian leva at the rate applicable at the date of settlement, in respect of pecuniary and non-pecuniary damage;
 - (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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Päivi Hirvelä
President