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

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Victims of unreasonably lengthy proceedings should turn to new compensatory remedies introduced by Bulgarian authorities before applying to the Court

In its decisions in the cases of **Valcheva and Abrashev v. Bulgaria** (applications nos. 6194/11 and 34887/11) and **Balakchiev and Others v. Bulgaria** (application no. 65187/10) the European Court of Human Rights has unanimously declared the applications inadmissible. The decisions are final.

The cases concerned the applicants' complaints about unreasonable length of proceedings. More importantly, they also concerned the effectiveness of two new administrative and judicial compensatory remedies introduced by the Bulgarian authorities following two pilot judgments.[1] These remedies were intended to enable victims of unreasonably lengthy proceedings, including people who had already lodged an application with the Court in this regard, to obtain monetary compensation.

Although no long-term practice had been established in this domain, the Court considered that it could not be assumed at this current stage that the Bulgarian authorities and courts applying the new remedies provisions of the Acts would not give proper effect to them. Therefore, the new remedies could be regarded as effective. Moreover, it considered that mere doubts about the effective functioning of a newly created statutory remedy did not dispense the applicants from having recourse to it. Since the applicants had not apparently brought such proceedings and no special circumstances absolved them from doing so, their complaints were rejected for non-exhaustion of domestic remedies.

Principal facts

In the case of **Valcheva and Abrashev v. Bulgaria**, the first application was lodged by Polyana Ivanova Valcheva, a Bulgarian national who was born in 1945 and lives in Lovech, and the second application was lodged by Enyo Nikolov Abrashev, a Bulgarian national who was born in 1957 and lives in Stara Zagora. In July 2004, the Lovech District Prosecutor's Office indicted Ms Valcheva, alleging that she had consciously enabled her *de facto* spouse to commit documentary fraud in order to obtain a retirement pension. In 2002, Mr Abrashev was charged with attempting, with the help of an accomplice, to obtain a large sum of money by using a false promissory note. Owing to numerous delays in proceedings, the criminal cases opened against the applicants lasted several years. Ms Valcheva and Mr Abrashev were finally acquitted in 2010 and 2013, respectively.

In the case of **Balakchiev and Others v. Bulgaria**, the first applicant, Anton Antonov Balakchiev, was born in 1978. He and all the remaining applicants are Bulgarian nationals and live in Sofia. They were all heirs of shareholders in a company owning a chocolate factory, which was nationalised in 1950. In 1992, a statute providing for the restitution of certain nationalised immovable properties came into force. Finding that the factory fell within the statute's ambit, the Mayor of Sofia decided to surrender its possession to the applicants, with the exception of several buildings erected after nationalisation. In 1994, the company agreed to transfer the possession of the buildings

[1] Cases of *Finger v. Bulgaria* (application no. 37346/05) and *Dimitrov and Hamanov v. Bulgaria* (applications nos. 48059/06 and 2708/09)), 10 May 2011

to the applicants under certain conditions. However, the transaction was not carried out for several years. Therefore, in June 1998 the applicants brought a claim against the company, the Ministry of Industry and the Sofia Municipality. The applicants' claim was finally dismissed in a judgment of 2007, which was upheld in 2009. In 2010, the applicants' appeal on points of law was not accepted for examination by the Supreme Court of Cassation.

Complaints, procedure and composition of the Court

In the case of **Valcheva and Abrashev v. Bulgaria**, the applications were lodged with the European Court of Human Rights on 3 December 2010 and 25 May 2011, respectively. Relying on Article 6 § 1 of the Convention (right to a fair trial within a reasonable time), the applicants complained in particular that the criminal proceedings against them had lasted an unreasonably long time.

In the case of **Balakchiev and Others v. Bulgaria**, the application was lodged on 20 October 2010. Relying also on Article 6 § 1 of the Convention, the applicants complained in particular that the proceedings against the company, the Ministry of Industry and the Sofia Municipality had been unreasonably lengthy.

The decisions were given by a Chamber of seven, composed as follows:

Ineta **Ziemele** (Latvia), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina)*, Judges*,

and also Françoise **Elens-Passos**, *Section Registrar.*

Decision of the Court

Article 6 § 1 of the Convention

Following two pilot judgments against Bulgaria concerning excessive length of proceedings, the Judiciary Act 2007 ("the 2007 Act") and the State and Municipalities Liability for Damage Act 1988 ("the 1988 Act") were amended to introduce two new compensatory remedies, one administrative and the other judicial.

The Court had to determine whether these new remedies, alone or taken together, were available and effective. As regards procedural guarantees, it noted in particular that the 2007 Act did not provide for a contentious procedure, and that the enforceability of a possible decision to grant compensation was open to doubt. However, the administrative remedy governed by the 2007 Act was only the first limb of the system of remedies introduced by the Bulgarian authorities. Indeed, the amended 1988 Act provided for a fully judicial procedure which could result in a legally binding decision by a court. Therefore, claims under the 1988 Act would benefit from the full panoply of the normal judicial procedure applicable to the examination of civil actions.

The other characteristics of the new remedies, namely their costs, their speediness, their scope as well as the amount and prompt payment of compensation, did not give rise to any general concerns. The Court found in particular that, although some aspects of the administrative and judicial procedures laid down in the 2007 Act and the 1988 Act might call for clarification, this would be a question of interpretation and practice by the

Bulgarian authorities and courts. Therefore, it could not be assumed at this stage that the authorities and the courts would not give proper effect to the new provisions. Moreover, mere doubts about the effective functioning of a newly created remedy did not dispense applicants from having recourse to it.

The Court also found that the remedies operated retrospectively as they provided redress in respect of delays preceding their introduction, both in pending cases before the Bulgarian courts and to people who had already lodged an application with the Court in which they had raised complaints in relation to unreasonably lengthy proceedings.

The remedies appeared to be available not only to persons who were party to proceedings which ended after they became operational – 1 October and 15 December 2012, respectively – but also to persons who were party to proceedings which ended less than six months before 15 December 2012, and to persons, such as the applicants in the present case, who lodged applications with this Court before those dates.

The Court therefore considered that, taken together, an application for compensation under the 2007 Act and a claim for damages under the 1988 Act could be regarded as effective domestic remedies in respect of the allegedly unreasonable length of proceedings before the civil, criminal and administrative courts in Bulgaria. Hence, the applicants were, in line with the Court's well-established case-law in relation to post-pilot judgment remedies, required to turn to the newly introduced remedies. As they had apparently not brought any proceedings under the new provisions of the 2007 Act or the 1988 Act and no special circumstances absolved them from doing so, the applicants' complaints were rejected for non-exhaustion of domestic remedies under Article 35 §§ 1 and 4 of the Convention.

The decisions are available only in English.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Jean Conte (tel: + 33 3 90 21 58 77)
Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)