



No violation of the Convention - the applicant had knowingly waived her right to appear in person before the courts

In today's **Chamber** judgment¹ in the case of [Lena Atanasova v. Bulgaria](#) (application no. 52009/07) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair trial) of the European Convention on Human Rights.

The case concerned Ms Atanasova's conviction in absentia and the courts' refusal to reopen the criminal proceedings.

The Court found in particular that the authorities had taken all reasonable and necessary steps in order to ensure that Ms Atanasova would appear before the district court for her trial, but that she could not be traced at the addresses that she had provided. She was prosecuted and convicted of fraud against several persons, which had involved a misleading promise of employment.

The Court considered that Ms Atanasova had knowingly and validly waived, by implication, her right to appear in person before the courts in the context of the criminal proceedings against her. In addition, the Court could not criticise the Supreme Court of Cassation for having refused, after taking these circumstances into account, to re-open the criminal proceedings.

Principal facts

The applicant, Lena Georgieva Atanasova, is a Bulgarian national who was born in 1967 and lives in Tarnene (Bulgaria).

On 8 May 2000 the Stara Zagora District Court validated an agreement between the prosecutor's office and Ms Atanasova. She admitted to the offences with which she was charged in the context of criminal proceedings against her, and was given a suspended sentence of ten months' imprisonment. In 2001 the Sofia District Court sentenced her to one year's imprisonment. In the meantime, in a judgment delivered on 3 September 2001, the Pavlikeni District Court had convicted her of defrauding 17 persons and sentenced her to three years and six months' imprisonment. That court subsequently decided that this sentence was to be served consecutively to those imposed on the applicant by the Stara Zagora and Sofia District Courts.

In the meantime, on 11 February 1999 another set of proceedings had been opened against Ms Atanasova. As she could not be found, they were suspended in December 2004 and a "wanted" notice was issued. According to the documents in the criminal case file, on 12 January 2005 an investigator informed Ms Atanasova that a police investigation concerning her had existed since 1999. On the same date she acquainted herself with the case file, acknowledged the offences with which she was charged and stated that she was willing to reimburse the sums fraudulently obtained from her victims in exchange for misleading promises to find them employment in Spain.

The Pleven District Prosecutor's Office subsequently drew up an indictment against Ms Atanasova for the offences that she had allegedly committed in 1998 and submitted it to the court in the same

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

town. The first hearing before that court was held in the defendant's absence. The court postponed the hearing on three occasions on account of her absence. Those postponed hearings were followed by fresh attempts to find and summon the applicant. As a result of its enquiries, the court ascertained that Ms Atanasova had not left the country and that she was not imprisoned. It decided to continue the criminal proceedings in the defendant's absence, as permitted by the Code of Criminal Procedure, and assigned a lawyer to represent her. At the hearing of 20 February 2007, the lawyer accepted that the offences had been proved, indicated that her client had not obstructed the criminal investigation and asked the court to show clemency. On the same date the court sentenced Ms Atanasova to four years' imprisonment. Deciding to combine this sentence with another that Ms Atanasova had already served in 2003, the court held that she was to serve an actual sentence of 10 months' imprisonment.

In November 2006 Ms Atanasova gave birth to a daughter. In May 2007 the authorities issued a search warrant for her; she was arrested by two police officers on 23 May and taken to Sliven Prison on the same day. Following her imprisonment, her daughter, then aged six months, remained with her father and other relatives. On 13 July 2007 Ms Atanasova submitted a request to the Court of Cassation, seeking to have the criminal proceedings reopened on the ground that she had not taken part in the examination of the criminal case against her. On 25 October 2007 the Supreme Court of Cassation dismissed the request. Ms Atanasova was released on 15 March 2008.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Ms Atanasova complained that she had been convicted *in absentia* and criticised the dismissal of her application to have the criminal proceedings reopened. Under Article 8 (right to respect for private and family life), she complained that the execution of the 10-month sentence deprived her of the possibility of caring for her daughter and that the prosecutor's office had refused to suspend the execution of her sentence. Lastly, relying on Article 6 § 1 and Article 4 of Protocol No. 7 (right not to be tried or punished twice), she alleged that the criminal proceedings brought against her had been excessively long and that she had been prosecuted and convicted twice for the same offences, namely defrauding several individuals through a misleading promise of employment in Spain.

The application was lodged with the European Court of Human Rights on 15 November 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Erik **Møse** (Norway),
Khanlar **Hajiye**v (Azerbaijan),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

Article 6 § 1

The Court observed that Ms Atanasova had been informed of the existence of the criminal proceedings in question on 12 January and 18 February 2005. On those two dates she had been charged, had acquainted herself with the documents in the criminal file, had been questioned and

admitted to the offences, and stated that she would explain herself before the courts. Ms Atanasova had thus not expressly waived her right to appear before the courts and to defend herself.

The Court then noted that the charges had been examined before the courts in the absence of Ms Atanasova, who could not be traced at the addresses which she had provided to the judicial authorities. After the conviction judgment had become final, Ms Atanasova had applied to have the proceedings reopened, but this had been dismissed on the ground that she had sought to evade justice. The Court therefore considered that the main question was whether or not it had been established that Ms Atanasova intended to evade justice or if she had waived, by implication, her right to appear and defend herself before the courts.

The Court noted, firstly, that the proceedings in issue had not been the first set of criminal proceedings brought against the applicant. When she was questioned on 12 and 18 February 2005, Ms Atanasova had admitted to the offences with which she was charged and had stated that she was willing to take part in sentencing proceedings on the basis of an acknowledgement of guilt, which would necessarily have implied a court appearance.

The Court observed that the summons to appear had not been served on Ms Atanasova, since she could not be traced at her correspondence address in Sofia. The Court noted that, in her application to it, Ms Atanasova explained that she had informed the investigator that she spent the weekends in Tarnene with her partner; it noted, however, that there was no evidence in the file to support this claim.

In consequence, the Court considered that the situation complained of by Ms Atanasova did not amount to an unjustified restriction on her right to participate in the hearing of the criminal case against her. It was established that Ms Atanasova had been duly informed of the existence of criminal proceedings against her, and of the offences with which she was charged. She had acknowledged the offences and expressed her willingness to negotiate the sentencing conditions, and could therefore reasonably have expected to be summoned to appear before the courts. Ms Atanasova had nonetheless left the address which she had previously indicated to the authorities, without informing them of her change of address. The authorities had taken all reasonable and necessary steps in order to ensure that she appeared before the district court for her trial.

The Court considered that Ms Atanasova had knowingly and validly waived, by implication, her right to appear in person before the courts for the purpose of the criminal proceedings being conducted against her. In addition, the Court could not criticise the Supreme Court of Cassation for having refused, after taking these circumstances into account, to re-open the criminal proceedings.

The Court concluded that there had been no violation of Article 6 § 1.

Article 8

The Court reiterated that the execution of a custodial sentence necessarily entailed limitations on the prisoner's private and family life. While it was true that Ms Atanasova had been separated from her daughter, aged barely six months at the relevant time, it was nevertheless the case that this separation had been relatively short, in that it had lasted ten months. During that time, Ms Atanasova had been granted regular home visits and had received visits from her family, and had had the possibility of caring for her daughter on those occasions. Furthermore, the Court noted that the domestic legislation permitted her to request that her daughter be given a place in the prison crèche, but that she had made no such request.

Lastly, with regard to the refusal by the prosecutor's office to suspend the execution of Ms Atanasova's sentence or to grant her early release, the Court reiterated that the right to obtain mitigation of a sentence was not guaranteed as such by the Convention and the Protocols to it. This complaint was manifestly ill-founded and had to be dismissed.

Article 6 § 1 and Article 4 of Protocol No. 7

On the basis of the documents available to it, the Court found no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application was manifestly ill-founded and had therefore to be rejected.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.