

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

THIRD SECTION

CASE OF BONEV v. BULGARIA

(Application no. 49443/17)

JUDGMENT

STRASBOURG

12 March 2024

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



In the case of Bonev v. Bulgaria,

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

Ioannis Ktistakis*, President*,
Yonko Grozev,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 49443/17) 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") on 29 June 2017 by a Bulgarian national, Mr Kancho Petkov Bonev ("the applicant"), who was born in 1943, lives in Varna and was represented by Mr P. Obretenov, a lawyer practising in Varna;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms R. Nikolova from the Ministry of Justice;

the parties' observations;

Having deliberated in private on 13 February 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the failure of national courts to respond to an argument raised by the applicant in civil proceedings.

2. Ms D.H. owed the applicant 19,066 Bulgarian levs (BGN) – equivalent of approximately 9,728 euros (EUR). Since she failed to pay it back, in August 2008 the parties signed a preliminary contract whereby Ms D.H. undertook to transfer to the applicant the ownership of a temporary pavilion used for commerce and constructed on municipal land in Varna, in lieu of monetary payment. However, soon after signing the preliminary contract Ms D.H. sold the property to her son.

3. In 2010 the applicant brought proceedings seeking to have the preliminary contract declared final, but in the meantime found out about the sale. He thus brought another action aiming to have the sale proclaimed null and void. In a final judgment of the Varna District Court of 27 July 2015 this latter action was allowed, and the sale was found to be null and void; it was in particular found that Ms D.H. had acted with the intent to harm the applicant's interests.

4. The main proceedings concerning the preliminary contract, which had been stayed, were resumed after that, but the applicant's action was rejected in a judgment of the Varna Regional Court of 6 June 2016. The domestic court found that the pavilion had been transferred by Ms D.H. to her son and could not be acquired by the applicant. It thus failed to comment on the Varna

District Court's judgment of 27 July 2015, despite the applicant expressly raising an argument on that point. In a final decision of 10 February 2017 the Supreme Court of Cassation refused to accept the case for cassation review, stating in particular that it could not deal at this stage with the Varna Regional Court's failure to respond to the applicant's argument.

5. The applicant complained under Article 6 § 1 of the Convention of the national courts' failure to reply to his argument concerning the judgment of 27 July 2015, and under Article 1 of Protocol No. 1 of the loss of his legitimate expectation to acquire property on that account.

THE COURT'S ASSESSMENT

I. ARTICLE 6 § 1 OF THE CONVENTION

6. The Government argued that the applicant had failed to exhaust the available domestic remedies. In particular, he could have sought the payment of the monetary debt owed to him by Ms D.H., or compensation for her failure to abide by the preliminary contract. The Government contended further, on the ground that the applicant had been entitled to seek to collect the debt through other means, that the proceedings at issue had not been decisive for his civil rights and obligations. The applicant stated that his interest was to have the preliminary contract enforced.

7. As mentioned above, the applicant complained under Article 6 § 1 of the Convention of the failure of the national courts to respond to his argument raised in the context of civil proceedings. The complaint does not concern Ms D.H.'s debt to the applicant, or the means to collect it. Accordingly, the Court dismisses the Government's objection of non-exhaustion of domestic remedies as not being directly relevant to the applicant's grievance.

8. The Court observes also that the applicant complained in relation to proceedings whereby he sought that a preliminary contract for the transfer of ownership of property be declared final. A favourable outcome could give rise to a title to property for him. Accordingly, the proceedings were decisive for his civil rights and obligations, and Article 6 § 1 is applicable. The Court thus dismisses the Government's further objection.

9. It notes furthermore that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

10. As to the merits, the applicable general principles have recently been summarised in *Zayidov v. Azerbaijan (no. 2)* (no. 5386/10, § 91, 24 March 2022, with further references). In particular, Article 6 § 1 of the Convention requires that judgments of courts and tribunals state the reasons on which they are based. Without requiring a detailed answer to every argument advanced by the complainant, such obligation presupposes nevertheless that parties to

judicial proceedings can expect to receive a specific and explicit reply to the arguments which are decisive for the outcome of those proceedings.

11. In the case at hand, the applicant relied before the Varna Regional Court and the Supreme Court of Cassation on the judgment of 27 July 2015, which had declared the sale of the disputed pavilion by Ms D.H. to her son null and void (see paragraphs 3-4 above). While it is not the Court's task to determine with finality the effects of that judgment on the proceedings concerning the preliminary contract, it is obvious that it could have been of decisive importance for the determination of finality of the preliminary contract. Yet, the Varna Regional Court failed to take the judgment of 27 July 2015 into account in its reasoning, stating instead, in contradiction to that judgment, that the pavilion had been validly transferred to Ms D.H.'s son. The Supreme Court of Cassation found, on its part, that it could not deal with the matter (see paragraph 4 above).

12. The Government contended that the applicant had failed to raise the argument based on the judgment of 27 July 2015 in a sufficiently clear manner. However, the Court observes that in his submissions before the Varna Regional Court the applicant relied expressly on the judgment of 27 July 2015, pointing out its relevance to Ms D.H.'s objection that the property had been transferred by her to a third party. In addition, the applicant cited a previous decision of the Supreme Court of Cassation, which had dealt with a similar situation. The applicant also raised the matter in his appeal before the Supreme Court of Cassation.

13. In view of the foregoing, the Court finds that the national courts failed to duly consider the applicant's essential argument, and thus to give proper reasons for their findings in the proceedings brought by him.

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

II. ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

15. The applicant complained in addition under Article 1 of Protocol No. 1 of the loss of his "legitimate expectation" to acquire property (see paragraph 5 above).

16. This complaint is linked to the one above and the Court similarly finds it admissible.

17. However, noting that it already found a violation of the applicant's right to a fair trial under Article 6 § 1 of the Convention, and that it cannot speculate on the outcome of the proceedings had this violation not been committed, the Court is of the view that the compliant under Article 1 of Protocol No. 1 does not call for a separate examination (see, among others, *Albina v. Romania*, no. 57808/00, §§ 42-43, 28 April 2005, and *Idakiev v. Bulgaria*, no. 33681/05, §§ 60-64, 21 June 2011).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. In respect of pecuniary damage, the applicant claimed the EUR 9,728 owed to him by Ms D.H. (see paragraph 2 above). He argued that the debt had remained unpaid due to the violation of his rights committed in the domestic proceedings. The applicant claimed in addition BGN 5,000, equivalent to EUR 2,557, in non-pecuniary damage.

19. The Government contested the claims, urging the Court to conclude that the finding of a violation amounted to sufficient just satisfaction.

20. The Court does not discern any direct causal link between the violation found and the pecuniary damage alleged. It noted already that the case before it was not directly concerned with Ms D.H.'s debt and the means to collect it, but was about the right to a fair trial in the proceedings concerning the preliminary contract. The Court also noted that it could not speculate on the outcome of the proceedings had the applicant received a fair trial (see paragraphs 7 and 11 above). Accordingly, the Court rejects the claim for pecuniary damage.

21. On the other hand, in view of the circumstances of the case and the violation found, it considers it justified to award non-pecuniary damage. The Court awards EUR 2,500 on that latter account, plus any tax that may be chargeable.

22. The applicant claimed in addition BGN 800 (EUR 410) awarded against him for Ms D.H.'s expenses in the domestic proceedings, but submitted no documents showing actual payment. He claimed other expenses incurred by him in the domestic proceedings, which he could not indicate precisely. For the proceedings before the Court, the applicant claimed an award for his legal representation, leaving to the Court to decide on the appropriate amount.

23. The Government pointed out that the claims were unsubstantiated by any documents.

24. Indeed, the claims related to the domestic proceedings have not been properly itemised and are not supported by any documents. Nor has the applicant submitted any documents showing that he has actually paid, or is under a legal obligation to pay, a remuneration to his legal representative before the Court. Accordingly, the expenses claimed cannot be considered to have been actually incurred, and the claims in that regard are to be dismissed.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that the complaint under Article 1 of Protocol No. 1 does not call for separate examination;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (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;

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

Done in English, and notified in writing on 12 March 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Ioannis Ktistakis
Deputy Registrar	President