

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

FIFTH SECTION

CASE OF GAVRILOV v. BULGARIA

(Application no. 44452/10)

JUDGMENT

STRASBOURG

18 January 2018

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



In the case of Gavrilov v. Bulgaria,

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

André Potocki, *President,*
Mārtiņš Mits,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 12 December 2017,

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

PROCEDURE

1. The case originated in an application (no. 44452/10) 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 Emanuil Asenov Gavrilov ("the applicant"), on 22 July 2010.

2. The applicant was represented by Mr L.N. Atanasov, a lawyer practising in Kyustendil. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. On 10 July 2014 the complaint concerning the failure to enforce the final judgment in the applicant's favour was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1966 and lives in Kyustendil.

5. In a judgment of 15 August 2004 the Sofia District Court awarded the applicant BGN 2,120.28 (about 1,100 euros (EUR)) in damages, plus the legal interest for the period starting on 11 February 2003 until full payment, and BGN 200 in costs and expenses, against the National Centre for Recreation, Rehabilitation and Sport ("the Centre"). The Centre was a State body subsidised by the Ministry of Education. It exercised certain functions entrusted by the Ministry. The damages were awarded for loss of salary following the applicant's unlawful dismissal from work. The judgment became final on 11 February 2008.

6. In the meantime, on 25 May 2005 the Minister of Education ordered that the Centre be closed down and its remaining property be managed by the Ministry of Education. The Ministry then established a State-owned joint-stock company with part of the Centre's property.

7. On 26 November 2008 the applicant was issued with a writ of enforcement for the amount awarded against the Centre in the final judgment of 11 February 2008 (see paragraph 5 above). On 18 March 2009 he filed a request with the Minister for Education for payment of that amount.

8. The Ministry of Education replied in May 2009 that neither the Ministry, nor the State-owned joint-stock company, was the successor of the Centre and that the amount claimed was not due by them.

9. As of 23 March 2015, the date of the applicant's last communication to the Court, no change in the above circumstances had been recorded.

II. RELEVANT DOMESTIC LAW

Enforcement of monetary claims vis-à-vis State institutions

10. The relevant provisions concerning enforcement of monetary claims vis-à-vis State bodies can be found in the Code of Civil Procedure 2007. In particular, Article 519 of the Code of Civil Procedure 2007 provides as follows:

> "1. The enforcement of money claims against State bodies is not allowed.
>
> 2. Money claims against State bodies shall be paid out of funds allotted for that purpose in their budgets. For this purpose, the writ of execution shall be presented to the financial department of the [State] body in issue. If no funds have been allocated, the higher [State] body shall take the necessary measures to provide such funds at the latest in the next budget."

11. In March 2010 the Ombudsman of the Republic challenged that provision before the Constitutional Court. In a judgment of 21 December 2010 (реш. № 15 от 21 декември 2010 г. по к. д. № 9/2010 г., обн. ДВ, бр. 5/2011 г.), the Constitutional Court refused to declare Article 519 unconstitutional in so far as it concerned State bodies, but declared it unconstitutional in so far as it concerned municipalities.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION AND OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

12. The applicant complained that the failure of the authorities to implement the final judgment in his favour, by virtue of which a State body owed to him a sum of money, breached his right to an effective remedy under Article 13 of the Convention. The Court, which is master of the characterisation to be given in law to the facts of the case, finds that the complaint at issue falls to be examined under Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention, which read respectively as follows:

Article 6 § 1

"1. In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing within a reasonable time by [a] ... tribunal ..."

Article 1 of Protocol No. 1

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. ..."

A. Admissibility

13. 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

14. The applicant reiterated his complaint.

15. The Government did not submit observations on the merits.

16. In accordance with the Court's established case-law, execution of a final judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention and an unreasonably long delay in the enforcement of a binding judgment may breach the Convention (see, among many other authorities, *Burdov v. Russia*, no 59498/00, §§ 34-35, ECHR 2002-III; *Mancheva v. Bulgaria*, no. 39609/98, § 54, 30 September 2004; *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 51, 15 October 2009). Likewise, the impossibility for an applicant to obtain the execution of a judgment in his or

her favour in due time constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Yuriy Nikolayevich Ivanov*, cited above, § 52).

17. It is the State's obligation to ensure that final decisions against its organs, or entities or companies owned or controlled by the State, are enforced without an unreasonably long delay (see *Yuriy Nikolayevich Ivanov*, cited above, § 54, with further references). The Court has earlier held in this respect that liquidation proceedings against a State organ cannot absolve the State of its responsibility to enforce a final judgment. To conclude otherwise would allow the State to use this avenue to avoid payment of the debts of its organs, especially taking into account that changing needs force the State to make frequent changes in its organisational structure, including by forming new organs and liquidating old ones (see *Kuksa v. Russia*, no. 35259/04, § 26, 15 June 2006; and *Nikitina v. Russia*, no. 47486/07, § 19, 15 July 2010).

18. Turning to the present case, the Court observes that the final judgment of 11 February 2008 in the applicant's favour has remained unenforced (see paragraphs 8–9 above) and the Government have not provided any justification for that (see paragraph 15 above). The Court has already established, including in the context of Bulgarian cases before it, that the prolonged failure of State bodies to enforce a final judgment in accordance with which they owed the payment of a sum of money breached both Article 6 § 1 and Article 1 of Protocol No. 1 (see *Mancheva*, cited above, §§ 61-62 and §§ 66–68; *Sirmanov v. Bulgaria*, no. 67353/01, §§ 33-34 and §§ 38–39, 10 May 2007; and *Pashov and Others v. Bulgaria*, no. 20875/07, §§ 59–63, 5 February 2013). The Court accordingly finds in the present case that, by failing for years to comply with the enforceable judgment in the applicant's favour, the domestic authorities prevented him from receiving an amount of money he could reasonably have expected to receive and deprived the provision of Article 6 § 1 of all useful effect.

19. It follows that there has been a violation of Article 6 § 1 and Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. 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

21. The applicant claimed approximately EUR 17,950 in respect of pecuniary damage, which sum comprised EUR 1,100 owed to him on the basis of the writ of enforcement and EUR 16,850 in unpaid salaries due to the authorities' failure to reinstate him on his previous work post. The applicant also claimed EUR 3,000 for non-pecuniary damage.

22. The Government contested in whole the applicant's claim in respect of pecuniary damage as unjustified and unproven. They pointed out that he had not brought a claim domestically in respect of the unpaid salaries which precluded him from claiming it directly before the Court. They also emphasised that it has not been demonstrated that he had indeed remained without a job during the period in question.

23. On the basis of the material in its possession the Court awards the applicant EUR 1,100 in respect of pecuniary damage, plus the legal default interest rate in Bulgaria for the period from 11 February 2003 (as stipulated in the writ of enforcement of 26 November 2008, see paragraphs 5 and 7 above) until the date of full payment. As regards the amount claimed as unpaid salaries to the applicant following his dismissal, the Court does not discern any causal link between the violation found and the pecuniary damage claimed in that connection; it therefore rejects this claim.

24. On the other hand, the Court finds that the failure of the authorities to pay the applicant what was due to him on the basis of the final judgment must have caused him emotional distress. It accordingly awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

25. The applicant also claimed EUR 500 for the costs and expenses incurred before the Court.

26. The Government stated that no time-sheet had been provided in respect of the time spent on legal representation.

27. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 500 covering costs for the proceedings before the Court.

C. Default interest

28. 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 application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention and of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 1,100 (one thousand one hundred euros), plus the legal default interest rate in Bulgaria for the period starting on 11 February 2003 until full payment, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 500 (five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 18 January 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	André Potocki
Acting Deputy Registrar	President