

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

FOURTH SECTION

CASE OF HADZHINIKOLOV v. BULGARIA

(Application no. 24720/04)

JUDGMENT

STRASBOURG

26 July 2011

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



In the case of Hadzhinikolov v. Bulgaria,

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

Lech Garlicki, *President,*
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having deliberated in private on 5 July 2011,

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

PROCEDURE

1. The case originated in an application (no. 24720/04) 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 Hristo Nikolov Hadzhinikolov ("the applicant"), on 29 June 2004.

2. The applicant was represented by Mr M. Ekimdzhiev and Mrs K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agents, Mrs S. Atanasova, Mr V. Obretenov and Mrs M. Dimova, of the Ministry of Justice.

3. On 9 July 2009 the President of the Fifth Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1943 and lives in Plovdiv.

A. The civil proceedings

5. For the period between 2 November 1993 and 11 August 1995 the applicant worked for a consortium of four companies. As he did not receive the full amount of his salaries and compensation for his unused paid leave, on 27 October 1995 he initiated civil proceedings for these amounts against one of the companies in the consortium.

6. For the period between 5 March 1996 and 4 June 1997 at least four hearings appear to have been held and two expert opinions were commissioned.

7. On 4 June 1997, upon the applicant's request, the other three companies were constituted as defendants.

8. For the period between 4 June 1997 and 18 November 1998 at least five hearings appear to have been held.

9. In a judgment of 5 January 1999 the Sofia City Court granted part of the applicant's claim. The judgment was not appealed against and became final.

B. The enforcement proceedings

10. On an unspecified date after 5 January 1999 the applicant requested the issue of a writ of execution, which was done on 26 February 1999. The applicant submitted that he became aware of this fact on 22 July 1999. On the latter date he requested the opening of enforcement proceedings.

11. On 25 August 1999 the enforcement officer invited the debtors to voluntarily pay the amounts under the writ of execution. On 27 January 2000 the applicant requested from the enforcement officer the undertaking of certain actions for collecting the debt. On 28 January 2000 the enforcement officer requested an attachment on the bank accounts of the debtors.

12. On 2 December 2001 the applicant requested to be accepted as a creditor under two other enforcement proceedings against the same debtors, which was granted on 11 December. On 15 April 2002, a certain distribution of payments to different creditors was proposed, as a result of which the applicant agreed to receive payment in instalments.

13. On 16 April 2004 the applicant again requested the enforcement officer to undertake actions for collecting his debt. On 19 April 2004 the enforcement officer requested attachments on the bank accounts of the debtors.

14. It does not appear that for the periods between 17 January 2000 and 2 December 2001, between 2 December 2001 and 15 April 2002 and between 15 April 2002 and 16 April 2004 the applicant requested any other actions to be undertaken or the enforcement officer undertook any such actions.

15. On 8 November 2004 the applicant requested his proceedings to be joined with another set of enforcement proceedings against the same debtors. On 9 November 2004 the enforcement officer requested the case files in those proceedings. The parties have not informed the Court whether the said proceedings were joined.

16. On 12 August 2005 the applicant requested the calculation of the amounts of the awarded interest. On 16 September 2005 an expert appointed

by the enforcement officer submitted the calculation. He concluded that the due sums, plus interest amounted to 40,834.17 dollars (USD) and 55 Bulgarian levs (BGN).

17. On 8 November 2005 the applicant concluded an out-of-court agreement with the consortium, under which the former agreed to receive the amount of 33,000 USD, the equivalent of BGN 54,484.96 and undertook the obligation to request the termination of the enforcement proceedings immediately after he had received this amount.

18. On an unspecified date shortly thereafter the applicant received the above amount and the enforcement proceedings were terminated.

II. RELEVANT LAW AND PRACTICE

A. Complaint about delays

19. After an amendment of 16 July 1999 Article 217a of the Code of Civil Procedure of 1952 ("the CCP"), in force until 2008, provided for parties in civil proceedings to file a complaint before the higher instance courts if the proceedings were being protracted ("complaint about delays"). Those courts had the power to issue binding instructions to the lower instance courts on how to process the case. This procedure was not applicable to enforcement proceedings.

B. Enforcement proceedings

20. Article 323 of the CCP provided that the enforcement proceedings could be opened upon the request of the creditor and after the latter had submitted a valid writ of execution or other equivalent document. The creditor was under the obligation to state against what possessions (bank accounts, immovable property, etc.) of the debtor he or she would like the enforcement to be directed (Article 323(3)). Throughout the proceedings the creditor could request the enforcement actions to be directed against different possessions of the debtor. Had the creditor not requested enforcement actions to be undertaken for a period of two years, the enforcement proceedings were to be terminated (Article 330 § 1 д).

21. Article 332 § 1 of the CCP provided that the parties to enforcement proceedings could appeal against an action undertaken by the enforcement officer or against failure of the latter to undertake an action requested of him or her. Until November 2002 these complaints were examined by the district courts, and after that – by the regional courts (Article 333 § 1). A copy of the complaint was served on the other party (Article 333 § 2), which had the opportunity of replying in writing (Article 333 § 3). The court examined the matter in private, unless it was necessary to hear witnesses or experts

(Article 334 § 1), and had to rule within thirty days after receiving the complaint (Article 334 § 4). Until 12 November 2002 the district courts' decisions on such complaints were appealable before the regional courts (Article 335 § 2, as in force before 12 November 2002).

THE LAW

I. PRELIMINARY OBJECTION

22. The Government argued that the applicant has failed to exhaust the available domestic remedies as he had not filed a complaint about delays under Article 217a of the CCP and an appeal against the actions or omissions of the enforcement officer under Article 332 of the CCP.

23. The applicant argued that the complaint about delays could be used only in respect of the court proceedings and did not constitute an effective remedy to be exhausted because it could not prevent the continuing of the violation, nor could it lead to the payment of compensation about the delay.

24. In respect of the appeal under Article 332 of the CCP the applicant contended that this remedy was not effective in his case because his complaint concerned certain inactivity (inactions) on behalf of the enforcement officer, while the wording of this provision and the domestic courts' practice suggested that only actions or refusal to undertake requested actions but not plain inactivity could be appealed against. In support of these contentions the applicant submitted copies of eight decisions given by the Supreme Court of Cassation or by Regional Courts, in four of which the courts had held that only actions or refusal to undertake specific actions that were considered as actions directly affecting the enforcement proceedings could be appealed against.

A. Complaint about delays

25. The Court finds that, as the applicant argued, the complaint about delays could be used only at the court phase of the proceedings in respect of delays incurred before the Sofia City Court. It observes, however, that this remedy was introduced in July 1999, while the court phase of the proceedings ended on 5 January 1999. It follows that at the material time the complaint about delays was not a remedy at the applicant's disposal and therefore, it did not represent an effective remedy to be exhausted within the meaning of Article 35 § 1 of the Convention. The Government's objection in that respect is therefore dismissed.

B. Appeal under Article 332 of the CCP

26. The Court considers that the question about the use of the appeal under Article 332 of the CCP is inextricably linked to the merits of the applicant's complaints under Articles 6 § 1 and Article 1 of Protocol No. 1 about the prolonged non-enforcement of the judgment of 5 January 1999, and therefore, joins this objection to the merits of the above complaints.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 AND ARTICLE 1 OF PROTOCOL No. 1 IN RESPECT OF THE PROLONGED NON-ENFORCEMENT

27. The applicant complained that the prolonged impossibility to receive payment in accordance with the final judgment of 5 January 1999 infringed his rights under Article 1 of Protocol No. 1. The Court considers that this complaint falls to be examined under Article 6 § 1 and Article 1 of Protocol No. 1.

Article 6 § 1 reads as follows:

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

Article 1 of Protocol No. 1 reads as follows:

> "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.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

28. The Government did not submit observations on the merits of the complaint.

29. The Court reiterates that the "right to a court" embodied in Article 6 comprises the execution of a final binding judicial decision (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III). It further notes that State responsibility for enforcement of a judgment against a private party extends no further than the involvement of State bodies in the enforcement procedures (see *Fuklev v. Ukraine*, no. 71186/01, § 67, 7 June 2005). A possible failure to enforce a judgment because of the debtor's indigence cannot be held against the State unless and to the extent that it is imputable to the domestic authorities, for example, to their errors or delay in proceeding with the enforcement (see, *mutatis mutandis*, *Omasta v. Slovakia* (dec.), no. 40221/98, 10 December 2002). However, the State

has an obligation to organise a system of enforcement of judgments that is effective both in law and in practice and ensures enforcement without any undue delay (see *Fuklev*, cited above, § 84). When the authorities are obliged to act in order to enforce a judgment and they fail to do so, their inactivity can engage the State's responsibility on the ground of Article 6 § 1 of the Convention (see *Scollo v. Italy*, 28 September 1995, § 44, Series A no. 315-C).

30. The Court notes that in the present case the dispute was between two private parties. It further notes that under the domestic legislation creditors were under the obligation to show initiative throughout the enforcement proceedings. Thus they are required not only to request the opening of the enforcement proceedings, but also to state against what possessions of the debtor the enforcement to be directed and to periodically request specific enforcement actions to be carried out. The lack of initiative and diligence on the part of the creditors could lead to the termination of the proceedings, had no actions been requested for a period of two years (see paragraph 20 above). The Court reiterates that a successful litigant may be required to undertake certain procedural steps and to act with a certain diligence in order to recover a judgment debt (see *Burdov v. Russia (no. 2)*, no. 33509/04, § 69, ECHR 2009-...; *Treial v. Estonia* (dec.), no. 48129/99, 28 November 2000; and *Topciov v. Romania* (dec.), no. 17369/02, 15 June 2006).

31. In the present case it appears that during lengthy periods of time the applicant did not act diligently in pursuing the enforcement of the 1999 judgment. Thus it appears that for periods of about one year and ten months between 17 January 2000 and 2 December 2001, two years between 15 April 2002 and 16 April 2004, and seven months between April 2004 and November 2004 (see paragraph 14 above) the applicant did not request any actions to be undertaken. Neither did he request information about the course of the proceedings, nor drew the enforcement officer's attention to the alleged inactivity if he believed that such had occurred.

32. In addition, the Court notes that every time the applicant made a request to the enforcement officer, the latter reacted immediately or within a short time. Thus, the applicant's requests to undertake actions for the collection of his debt of 27 January 2000 and 16 April 2004 were examined on 28 January 2000 and 19 April 2004 respectively when the enforcement officer ordered attachments on bank accounts of the debtors (see paragraphs 11 and 13 above) and the requests to be accepted as a creditor under other enforcement proceedings of 2 December 2001 and 8 November 2004 were examined on 11 December 2001 and 9 November 2004 respectively (see paragraphs 12 and 15 above). The applicant's request for calculation of the due interest of 12 August 2005 was also dealt with promptly (see paragraph 16 above).

33. In view of the above, the Court considers that the applicant has not acted diligently in order to ensure the enforcement of the judgment and that the State has not failed to take adequate measures in that respect (compare *Ciprova v. The Czech Republic* (dec.), no. 33273/03, 22 March 2005, *Topciov,* cited above*,* and *Osmanov v. Azerbaijan* (dec.), no. 4582/06, 17 September 2009; see, by contrast, *Ruianu v. Romania*, no. 34647/97, §§ 72-73, 17 June 2003 and *Cebotari and Others v. Moldova*, nos. 37763/04 et al., § 49, 27 January 2009).

34. Having regard to the above, the Court does not find it necessary to examine whether the appeal under Article 332 of the CCP was an effective remedy in the circumstances of the present case.

35. It follows that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION IN RESPECT OF THE LENGTH OF THE PROCEEDINGS

36. The applicant complained that the length of the proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

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

37. The Government did not comment.

38. The Court reiterates that the court proceedings and the enforcement proceedings are stages one and two in the total course of proceedings (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 197, ECHR 2006-V). Therefore, the enforcement of a final judgment should not be dissociated from the judicial proceedings and the proceedings are to be examined in their entirety (see, among many others, *Estima Jorge v. Portugal*, 21 April 1998, § 35, *Reports of Judgments and Decisions* 1998-II; *Sika v. Slovakia*, no. 2132/02, §§ 24-27, 13 June 2006; and *Ivan Panchenko v. Ukraine*, no. 10911/05, § 55, 10 December 2009).

39. The Court notes that the consideration of the applicant's case by the domestic courts lasted from 27 October 1995 to 5 January 1999 (see paragraphs 5 and 9 above), when the Sofia City Court found in the applicant's favour. The length of the proceedings in the judicial phase is therefore three years, two months and ten days for one level of jurisdiction.

40. The enforcement proceedings continued from 22 July 1999 to 8 November 2005 when the applicant concluded an out-of-court agreement and the enforcement proceedings were terminated (see paragraphs 10 and 17 and 18 above). This phase therefore lasted six years, three months and

nineteen days. The overall length of the proceedings was therefore nine years, five months and twenty-nine days.

A. Admissibility

41. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

42. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

43. The Court observes that the court phase of the proceedings continued for three years and two months for one level of jurisdiction. Special diligence was required as the proceedings concerned an employment dispute and in particular, unpaid salaries (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D). The applicant was not responsible for any significant delays. In view of what was at stake in the proceedings their length appears excessive.

44. As to the enforcement phase, it lasted for about six years and three months. The Court has already found above that certain delays could be attributed to the applicant (see paragraphs 14 and 31 above). Furthermore, the State cannot be held responsible for delays caused by the debtors' actions and their inability to pay. The length of this period, therefore, does not appear excessive.

45. In view of the above and having regard to its case-law on the subject, the delays attributable to the authorities at the court phase of the proceedings and what was at stake for the applicant, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

IV. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

46. The applicant complained under Article 13 of the Convention that he did not have an effective domestic remedy for the length of the proceedings. Article 13 reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

47. The Government did not express an opinion on the matter.

48. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

49. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). A remedy is effective if it prevents the alleged violation or its continuation or provides adequate redress for any breach that has already occurred (ibid., § 158, and *Mifsud v. France* (dec.) [GC], no. 57220/00, § 17, ECHR 2002-VIII).

50. In the instant case, the Court refers to its finding that in the present case a "complaint about delays" did not represent a remedy to be exhausted (see paragraph 25 above). It follows that it cannot be considered as an effective remedy within the meaning of Article 13 of the Convention. As regards compensatory remedies, the Court has also not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings (see, for example, *Rachevi v. Bulgaria*, no. 47877/99, §§ 96-104, 23 September 2004). The Court sees no reason to reach a different conclusion in the present case.

51. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 16,509.08 euros (EUR) in respect of pecuniary damage for loss earnings sustained as a result of the delayed payment and the inflation in the country. He also claimed EUR 16,000 in non-pecuniary damage for the frustration and anguish experienced as a result of the excessive length of the proceedings and the lack of effective remedies in that respect and EUR 15,000 for the alleged violations of Article 6 § 1 and Article 1 of Protocol No. 1 in respect of the enforcement proceedings.

54. The Government contested these claims as excessive. In respect of the pecuniary damage they argued that there was no causal link between it and the alleged violations of the Convention.

55. The Court observes that in the present case, an award of just satisfaction can be based only on the violations of Articles 6 § 1 and 13 of the Convention in respect of the length of the proceedings. It does not discern any causal link between the violations found and the pecuniary damage alleged and therefore rejects this claim. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the breaches of his rights under the above-mentioned provisions. Ruling on an equitable basis, it awards award him EUR 1,600 under this head.

B. Costs and expenses

56. The applicant also claimed EUR 2,672.38 for the costs and expenses incurred before the Court. This amount included EUR 2,450 in legal fees, EUR 30 in fees for the expert opinion on the claimed pecuniary damage, EUR 162.38 in translation costs and EUR 30 in postal expenses and office materials. The applicant submitted a contract with his representatives and a time sheet for 35 hours at an hourly rate of EUR 70. He also presented a contract with a translator. The applicant requested the amount of EUR 300 for legal fees to be paid to him and the amount of EUR 2,150 to be paid directly into the bank account of his representatives. He also requested the amount of EUR 30 (fees for the expert opinion) to be paid to him, EUR 30 to be paid directly into the bank account of his representatives and EUR 162.38 (translation costs) to be paid in the bank of the latter's' law firm.

57. The Government contested these claims.

58. 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 600 covering costs under all heads, EUR 330 of which to be paid to the applicant and EUR 270 to be paid directly in the bank account of the applicant's legal representatives.

C. Default interest

59. The Court considers it appropriate that the default interest 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 concerning the excessive length of the proceedings and the lack of effective remedies in that respect admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;

3. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 6 § 1 on account of the excessive length of the proceedings;

4. *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 1,600 (one thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, EUR 270 of which to be paid directly into the bank accounts of the applicant's legal representatives;
   (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;

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

Done in English, and notified in writing on 26 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Registrar	Lech Garlicki President