

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

FOURTH SECTION

CASE OF PAVLOV v. BULGARIA

(Application no. 3662/06)

JUDGMENT

STRASBOURG

6 March 2012

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



In the case of Pavlov v. Bulgaria,

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

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 14 February 2012,

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

PROCEDURE

1. The case originated in an application (no. 3662/06) 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 Rayko Metodiev Pavlov ("the applicant"), on 5 January 2006.

2. The applicant was represented by Mr K.D. Kirev, a lawyer practising in Kardzhali. The Bulgarian Government ("the Government") were represented by their Agent, Ms N. Nikolova, of the Ministry of Justice.

3. On 24 November 2010 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1963 and lives in Kardzhali.

5. On 17 September 1999 the applicant, who worked as a foreman in a mine, was dismissed for a violation of the discipline. On 27 September 1999 he brought proceedings against his employer, claiming that his dismissal was unlawful and seeking reinstatement to work and compensation.

6. The hearing on 1 December 1999 of the Kardzhali District Court was postponed for gathering of evidence. On 1 March and 26 April 2000 the court instructed the applicant to correct certain flaws in his statement of claim. From 7 June to 5 July 2000 it conducted three other hearings and on the latter date postponed the hearing to 20 September 2000 for questioning of witnesses. The applicant made a complaint about delays. On 13 July 2000 the Kardzhali Regional Court established that the District Court had postponed the hearing of the case on a number of occasions for gathering of

evidence. It noted that the District Court could have been more diligent in conducting the case in view of the nature of the claim. For example, it could have imposed fines on the parties for not submitting their requests in due course. It instructed the District Court to conduct the next hearing within one month as from the date on which the case file would be returned to it.

7. In compliance with the instructions, the District Court rescheduled the next hearing for 2 August 2000. On 7 August 2000 it held the last hearing and dismissed the claim. It held that the applicant had breached his duties as a foreman because during the night shift on 27 August 1999 he had exempted one of his subordinates from work without reporting his absence. The applicant appealed.

8. The Regional Court held two hearings and on 1 February 2001 quashed the judgment of 7 August 2000 and granted the applicant's claim. It held that the procedural requirements for requesting explanations from the applicant had not been met by his employer. The latter appealed.

9. On 18 March 2002 the Supreme Court of Cassation conducted a hearing. In a judgment of 15 April 2002 it quashed the judgment of 1 February 2001. It held that the applicant's employer had met the procedural requirements for taking explanations from the applicant.

10. On 17 May 2002 the Regional Court held a hearing. The applicant requested the assignment of an expert report. The hearings on 21 June and 13 September 2002 were postponed because the appointed experts had failed to submit their reports. Between 25 October and 6 December 2002 it conducted three other hearings and on 3 February 2003 dismissed the claim. It held that the applicant had exempted a worker from the night shift without reporting his absence, and thus had breached his duties of a foreman and had abused the confidence of his employer. The applicant appealed.

11. The Supreme Court of Cassation conducted a hearing on 2 June 2005 and in a final judgment of 19 September 2005 upheld the judgment of 3 February 2003. It fully endorsed the findings of the Regional Court.

12. On two occasions in 2000 and 2002 the applicant complained to the president of the Kardzhali Regional Court and the Ministry of Justice that the examination of his case was delayed. In letters of 23 March 2000 and 20 November 2002 the president of the Regional Court informed the applicant that he had not established any unreasonable delays in the proceedings.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

13. 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..."

14. The Government argued that the length of the proceedings had not been unreasonable in view of the fact that the case had been examined twice by the Supreme Court of Cassation. They further maintained that the applicant had been responsible for some of the delays because of the flaws in his statement of claim. They also stated that the applicant's complaint about delays had been examined by the higher court.

15. The period to be taken into consideration began on 27 September 1999 and ended on 19 September 2005. The proceedings thus lasted six years less eight days for three levels of jurisdiction.

A. Admissibility

16. 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

17. 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). Special diligence is necessary in employment disputes (*Georgi Georgiev v. Bulgaria*, no. 22381/05, § 18, 27 May 2010).

18. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Kotseva-Dencheva v. Bulgaria*, no. 12499/05, § 22-23, 10 June 2010, and *Georgi Georgiev*, cited above, § 19-20).

19. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of

persuading it to reach a different conclusion in the present case. In particular, the case does not seem to have been complex as it concerned only one incident: the non-appearance of a worker during the night shift and the applicant's conduct as a foreman (see paragraphs 7 and 10 above). In respect of the conduct of the authorities, it should be noted that the case was examined twice by the Supreme Court of Cassation, which caused an overall delay of more than three and a half years, and that one of these reviews resulted in the remittal of the case to the Regional Court (see paragraphs 9 and 11 above). There is no indication that the applicant contributed to any significant delays in the proceedings, save the flaws of his statement of claim, which caused a three-month delay (see paragraph 6 above). Therefore, having regard to its case-law on the subject, the Court considers that in the instant case the overall length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

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

II. OTHER COMPLAINTS

21. The applicant also complained under Article 6 § 1 of the Convention that the domestic courts had not been impartial and had dismissed his action.

22. The Court notes that the applicant failed to adduce any arguments in support of these complaints. It follows that they must be rejected as unsubstantiated, and therefore manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed, without elaborating further, 5,000 euros (EUR) in respect of pecuniary damage and EUR 9,000 in non-pecuniary damage.

25. The Government contested these claims as unsubstantiated and excessive.

26. The Court notes that the applicant's claim for pecuniary damage is unsubstantiated, and therefore rejects it. On the other hand, it considers that

the applicant must have sustained non-pecuniary damage in connection with the violation of the Convention found in his case. Ruling on an equitable basis, it awards him EUR 800 under that head.

B. Costs and expenses

27. The applicant made no claim for costs and expenses.

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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 800 (eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bulgarian levs 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;

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

Done in English, and notified in writing on 6 March 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President