

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

FIFTH SECTION

CASE OF SHEHOVA v. BULGARIA

(Application no. 68185/11)

JUDGMENT

STRASBOURG

18 January 2018

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



In the case of Shehova 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. 68185/11) 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, Ms Iskra Antimova Shehova ("the applicant"), on 4 October 2011.

2. The applicant was represented by Ms V. Tenova, a lawyer practising in Plovdiv. 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 of the national authorities to enforce two final domestic judgments 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 1959 and lives in Smolyan.

5. In two final judgments of 28 February 2005 and 8 May 2006 the Supreme Court of Cassation awarded the applicant pecuniary damages in respect of breach of contract for construction works which she had carried out. The awarded damages comprised BGN 52,784 for the principal amount, plus BGN 17,685 in default interest and BGN 5,433 in costs and expenses, or a total amount of BGN 75,902.93, the equivalent to 38,000 euros (EUR). The damages were awarded to the applicant against the National Centre for Recreation, Rehabilitation and Sport – Ministry of Education and Science ("the Centre", a State body subsidised by the

Ministry of Education and Science and exercising certain functions delegated by the Ministry).

6. By an order of 25 May 2005 the Minister of Education closed down the Centre and ordered that 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, including the real estate in which the applicant had carried out the construction works.

7. On 13 May 2005 and 15 March 2007 the applicant was issued with two writs of enforcement for the amounts awarded in the final judgments of 2005 and 2006 (see paragraph 5 above) and on 6 February 2008 she presented the writs to the Ministry of Education asking it to pay.

8. The Ministry replied in writing that it was not the successor to the Centre and did not owe payment to the applicant. In October 2009 the applicant reiterated her request but received a similar reply by the Ministry. The Ministry also pointed out that payment could not be sought from the State-owned joint-stock company either as it had a legal personality separate from that of the Ministry. By a letter of 23 September 2010, the Minister provided a similar explanation to the applicant.

9. The applicant brought judicial review proceedings challenging the Minister's refusal. In a final decision of 8 April 2011 the Supreme Administrative Court rejected the appeal as inadmissible.

10. As of 19 March 2015, the date of the applicant's last communication to the Court, no change in the above circumstances had been reported.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Enforcement of monetary claims vis-à-vis State institutions

11. The relevant provisions concerning enforcement of monetary claims vis-à-vis State bodies until 2007 have been set out in the case of *Mancheva v. Bulgaria*, no. 39609/98, §§ 36-38, 30 September 2004. The relevant provisions as of 2008 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."

12. 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

13. The applicant complained that the failure of the authorities to implement the final judgments in her favour, by virtue of which a State body owed her a sum of money, breached her right to access to a court under Article 6 § 1 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

14. At the time of submitting their observations in respect of the applicant's claim for just satisfaction, the Government advanced that the applicant had failed to exhaust domestic remedies. In particular, the writs of enforcement presented by her to the Ministry had indicated that the indebted institution had been the Centre. According to the Government the Ministry was not a legal successor of the Centre and had not taken part in the judicial proceedings concerning the Centre's debts to the applicant. Consequently, the applicant's complaint concerned a legal dispute which had not been dealt with at the domestic level.

15. The Court considers that the issue of admissibility is closely linked to the merits and must therefore be joined to the merits. The Court furthermore notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

16. The applicant reiterated her complaint.

17. The Government did not elaborate further.

18. 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).

19. 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).

20. Turning to the present case, the two final judgments of 2005 and 2006 in the applicant's favour have remained unenforced (see paragraphs 8 and 10 above) and the Government have not provided any justification for that (see paragraph 17 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).

21. The Court accordingly dismisses the Government's objection concerning non-exhaustion of domestic remedies and finds that, by failing for over ten years to comply with the enforceable judgments in the applicant's favour, the domestic authorities prevented her from receiving an

amount of money she could reasonably have expected to receive and deprived the provision of Article 6 § 1 of all useful effect.

22. 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

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 approximately EUR 38,000 in respect of pecuniary damage and EUR 10,000 in respect of non-pecuniary damage.

25. The Government submitted that the claim for non-pecuniary damages was excessive and unjustified.

26. The Court observes that the amount claimed by the applicant in respect of pecuniary damage is the same as that awarded to her in the final judgments and it has remained unpaid. Accordingly, it awards her EUR 38,000 for pecuniary damage.

27. The Court furthermore finds that the failure of the authorities to pay the applicant what was due to her on the basis of the final judgments must have caused her emotional distress. It accordingly awards the applicant EUR 3,600 in respect of non-pecuniary damage.

B. Costs and expenses

28. The applicant also claimed EUR 2,000 for the costs and expenses in the form of legal fees which she had incurred before the Court.

29. The Government submitted that this sum was exaggerated and not accompanied by the relevant account of expenses.

30. 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 1,000 covering costs for the proceedings before the Court.

C. Default interest

31. 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. *Decides* to join to the merits the Government's objection concerning non-exhaustion of domestic remedies and dismisses it;

2. *Declares* the application admissible;

3. *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;

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 38,000 (thirty-eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,000 (one thousand 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;

5. *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