

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

FOURTH SECTION

CASE OF STEFANOV v. BULGARIA

(*Application no. 32438/96*)

JUDGMENT

(Friendly settlement)

STRASBOURG

3 May 2001

In the case of Stefanov v. Bulgaria,

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

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr L. CAFLISCH,
Mr J. MAKARCZYK,
Mr V. BUTKEVYCH,
Mr J. HEDIGAN,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 10 April 2001,

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

PROCEDURE

1. The case originated in an application (no. 32438/96) against Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Ivailo Stefanov ("the applicant"), on 5 July 1996.

2. The applicant was initially represented by Mrs Z. Kalaydjieva, a lawyer practicing in Sofia, and Mr P. Bitsaxis, a lawyer practising in Athens and later by Mr A. Garay, a lawyer practising in Paris. The Bulgarian Government ("the Government") were represented by their Agent, Mrs V. Djidjeva, Ministry of Justice. Having initially been designated by the initials I. S., the applicant subsequently agreed to the disclosure of his name (Rule 47 § 3 of the Rules of Court).

3. The applicant complained, *inter alia*, under Article 9 of the Convention that there had been a violation of his right to freedom of religion and conscience. In 1995 and 1996 he had been convicted and sentenced for having refused to serve in the army allegedly only because Parliament had been slow in adopting a law establishing substitute service for conscientious objectors, despite a constitutional provision permitting such substitute service. In the applicant's view the measures against him were thus unlawful and not necessary in a democratic society.

4. Following communication of the application to the Government by the Commission, the case was transferred to the Court on 1 November 1998 by virtue of Article 5 § 2 of Protocol No. 11 to the Convention. On 6 April 2000, after obtaining the parties' observations, the Court declared the application admissible in so far as this complaint was concerned. A

further complaint under Article 6 § 1 of the Convention was declared inadmissible on the same date.

5. On 11 July 2000, after an exchange of correspondence, the Registrar suggested to the parties that they should attempt to reach a friendly settlement within the meaning of Article 38 § 1 (b) of the Convention.

On 21 November 2000 the applicant submitted the text of a draft friendly settlement dated 15 November 2000 and signed by the parties. On 16 March 2001 the Agent of the Government informed the Court that on 8 March 2001 the agreement had been approved and had become final.

THE FACTS

6. The applicant is a Bulgarian national born in 1975 and residing in Shoumen. In 1993 he joined the local religious community of Jehovah's Witnesses.

7. In September 1994 he appeared at the Regional Military Office in Shoumen in answer to a summons to receive an order for the commencement of his military service. The applicant refused to accept the order and explained that his beliefs did not allow him to serve in the army. In response the commander offered him to perform his military service in the Civil Construction Military Forces (Строителни войски), or at a military hospital, as a medical orderly, or in a military unit as a cook. The applicant refused these proposals as what was offered remained a service for the benefit of the army. Also, it would have still been necessary to undergo training with arms and to take an oath.

8. On 24 October 1994 criminal proceedings were opened against the applicant under section 361 § 1 of the Penal Code.

On 23 March 1995 the local District Court convicted the applicant and sentenced him to one and a half years' imprisonment. The court found that the law protected the religious freedoms but did not exempt anyone from military service. Moreover, the applicant refused to accept offers which were made in an effort to ensure respect for his religious beliefs. This indicated that the real reasons for the applicant's refusal to serve lay in his unwillingness to do so rather than in his religious convictions.

The court decided that the sentence should not be suspended because its effective serving by the applicant could help him understand his constitutional duties and have a positive impact on his personal development. Also, "the sentence [had to] be served because the court [found] that the arrival of more than 50 of the [applicant's] co-believers at the hearing [had been] organised in advance"; and because all those who had agreed to serve in the army despite their beliefs had to feel protected.

9. The applicant appealed to the Shoumen Regional Court against his conviction and sentence. As a result, in accordance with the relevant law, the District Court's judgment did not enter into force pending the examination of the appeal, and the applicant was not imprisoned.

On 6 June 1995 the Regional Court delivered its judgment. It found that the District Court had given excessive weight to the "general prevention" purpose of the sentence and that as a result the sentence was manifestly disproportionate. Instead, an opportunity should have been given to the applicant to think over his acts, under the threat of effective serving of the sentence if he re-offended. The Regional Court, therefore, suspended the sentence for a period of three years.

10. The applicant submitted a petition for review(cassation) to the Supreme Court alleging *inter alia* that the courts should have applied Article 59 § 2 of the Constitution, which provided for substitute service, and the Convention. On 17 November 1996 the Supreme Court dismissed the petition on the merits, stating that the applicant undisputedly had committed the crime under section 361 § 1 of the Penal Code.

11. Article 59 § 2 of the Bulgarian Constitution, adopted in 1991, provides that military service and "the conditions and procedure for exemption therefrom or for their replacement by substitute service, shall be regulated by act of Parliament". At the time of the applicant's refusal to serve in the army, military service was regulated by the Military Service Act of 1958. It did not mention substitute service.

12. In December 1995 Parliament adopted the Defence and Armed Forces Act, in force since 27 February 1996, replacing the 1958 law. Its section 84 provides:

> "(1) The duty to perform conscription military service may be replaced by substitute service.
>
> (2) The conditions and the rules for performing substitute service shall be determined by act of Parliament."

13. An act of Parliament regulating substitute service was adopted in November 1998 and entered into force on 1 January 1999. Persons convicted before 1 January 1999 for having refused to do military service on grounds of conscientious objection have not been granted amnesty.

THE LAW

14. The text of the friendly settlement reached by the parties, insofar as relevant, reads as follows:

> "... [T]he parties agree as follows:

a) all criminal proceedings and judicial sentences in Bulgaria of Bulgaria citizens since 1991 (especially but not limited to [Mr I. S. and three other applicants in other cases]) for refusing military service by virtue of their individual conscientious objection but who were willing at the same time to perform alternative civilian service shall be dismissed and all penalties and/or disabilities heretofore imposed in these cases shall be eliminated as if there was never a conviction for a violation of the law, thus the Council of Ministers of the Republic of Bulgaria undertakes the responsibility to introduce draft legislation before the National Assembly for a total amnesty for these cases;

b) That the alternative civilian service in Bulgaria is performed under a purely civilian administration and the military authority is not involved in civilian service and such service shall be similar in duration to that required for military service by the law on military service then in force,

c) That conscientious objectors have the same rights as all Bulgarian citizens to manifest their beliefs whether alone or in union with others after hours and on days off during the term of performing said civilian service without prejudice, sanction or another disability or impediment. (see ... Kokkinakis v. Greece [judgment]), ...

e) That the respondent Government will pay ... [to the applicant] the sum of 2,500 Bulgarian levs ... for costs and expenses;

f) The applicant[ ]..., having the Bulgarian Government fully complying with the conditions listed above on points a, b, c, ... and e, agree to withdraw [his] petition[...] against Bulgaria, filed with the European Court of Human Rights."

15. The Court takes note of the agreement reached between the parties (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention or its Protocols (Article 37 § 1 *in fine* of the Convention and Rule 62 § 3 of the Rules of Court).

16. Accordingly, the case should be struck out of the list.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English, and notified in writing on 3 May 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Georg RESS
President