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

FOURTH SECTION

DECISION

Application no. 15644/06
Vasil Dimitrov GEORGIEV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 5 November 2013 as a Chamber composed of:

Ineta Ziemele, *President,*
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 March 2006,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Vasil Dimitrov Georgiev, is a Bulgarian national who was born in 1971 and lives in Ruse. He was represented before the Court by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Administrative fines and claim for damages against the State

3. On 27 June 2001 the applicant, a medical doctor, was given four administrative fines amounting in total to 320 Bulgarian levs (BGN)

(equivalent to 163.61 euros (EUR)) for failing to keep accurate patient records. The fines were imposed under the Administrative Offences and Sanctions Act 1969 (see paragraph 20 below). The applicant sought judicial review of the fines, and his case was examined at two levels of jurisdiction. He retained counsel, who charged him BGN 65 (equivalent to EUR 33.23) in fees. In a final judgment of 17 June 2003, the Ruse Regional Court quashed the fines.

4. In 2005 the applicant brought a claim under the State and Municipalities Liability for Damage Act 1988 (see paragraph 23 below), seeking to recoup the legal fees he had incurred by way of damages. The claimed amount was smaller than the statutory monthly minimum wage in the country, which, at the relevant time, was the equivalent of around EUR 75.

5. In a judgment of 7 November 2005, the Ruse District Court allowed the applicant's claim. It held that since the 1969 Act was silent on awards of costs, the applicant could recoup those costs in proceedings under the 1988 Act. This was so because they had been incurred as a result of an unlawful administrative decision.

6. On appeal, in a final judgment of 13 January 2006 the Ruse Regional Court overturned the lower court's judgment. It held that since the 1969 Act did not lay down any rules in respect of the award of costs, the Code of Criminal Procedure 1974 should be applied. However, the Code did not provide for an award of costs either. The court went on to say that the costs incurred by the applicant had not been a direct result of an unlawful administrative decision and could not be regarded as actionable damage under the 1988 Act, and dismissed the claim.

2. Criminal proceedings

7. On an unspecified date the applicant was charged with forgery. He was accused of creating 178 false records of medical examinations which had not in fact taken place and for which he had received payments from the National Health Insurance Fund.

8. On 10 December 2007 the Ruse District Court found the applicant guilty as charged, sentenced him to one year's imprisonment, and barred him from working as a medical doctor for three years.

9. The applicant appealed, requesting, *inter alia,* the examination of two additional witnesses and the gathering of further evidence. The Ruse Regional Court turned down those requests in a decision of 27 February 2008 and at a hearing held on 28 February 2008.

10. In a final judgment of 27 March 2008, the Ruse Regional Court upheld the lower court's judgment. It held, *inter alia,* that in previous criminal cases against him the applicant had been acquitted because he had been charged with offences which could be committed by a person acting in an official capacity, which he did not have, whereas in the case at hand his

official capacity or the lack of it was irrelevant to the charges and to the conviction.

3. Fine for contempt of court

11. In the course of the above criminal proceedings, on 10 December 2007 the judge presiding over the panel of the Ruse District Court dealing with the applicant's case interrupted the applicant's address while the applicant was saying that the prosecution was "fantasising" about the charges and that "the court was alleging the same nonsense", and fined him BGN 500 (equivalent to EUR 255.59) for contempt of court, on the grounds that he had been using insulting words and behaving rudely in the courtroom. The applicant then continued his address.

12. On 17 December 2007 the applicant appealed against the fine before the president of the Ruse District Court, who responded that he was not competent to examine the appeal.

13. On 27 December 2007 the applicant asked the president of the Ruse District Court to forward his appeal to the panel which was dealing with his case and was thus competent to examine it. It is not clear whether his appeal was examined.

14. On 10 January 2008 the applicant sought judicial review of the fine by the administrative courts. In a final judgment of 14 March 2008, the Supreme Administrative Court dismissed his application, pointing out that the examination of a legal challenge against a fine for contempt of court was to be conducted using the procedure established by Article 266 of the Code of Criminal Procedure 2005, which provided that such fines were to be challenged before the panel dealing with the case in the course of which the fine had been given.

4. Libel proceedings

15. In 2002 the applicant brought a claim for damages against Ms D.N., alleging that she had libelled him. On 30 January 2006 the Supreme Court of Cassation granted the applicant's application for reopening of the case and quashed the previously delivered judgments in the case.

16. In a judgment of 11 August 2006 the Ruse District Court dismissed the applicant's claim.

17. On appeal, at a public hearing held on 19 January 2007 the Ruse Regional Court turned down the applicant's request for an adjournment on health grounds. It noted that one hearing had already been adjourned at the applicant's request, again on health grounds, and went on to say that the applicant's medical condition was not so serious as to prevent him from appearing in court. The court then admitted Ms D.N.'s written submissions and evidence.

18. In a final judgment of 24 January 2007, Ruse Regional Court dismissed the applicant's claim.

19. The applicant again sought the reopening of the case. In a final judgment of 4 March 2008, the Supreme Court of Cassation rejected the application, as it found that the case had already been reopened once on the applicant's application and that the applicant had not presented or requested the gathering of additional evidence after the reopening. The court went on to note that one hearing had been adjourned at the applicant's request and that his medical condition was not so serious as to prevent his appearance in court. It concluded that the applicant's procedural rights had not been breached and that by seeking adjournments he had been abusing those rights.

B. Relevant domestic law

1. The Administrative Offences and Sanctions Act 1969

20. The Administrative Offences and Sanctions Act 1969 lays down the procedure for establishing and punishing administrative offences. Orders imposing administrative sanctions are subject to judicial review by the district courts, whose judgments were, until the end of February 2007, subject to appeal before the regional courts (sections 59 and 63). On 1 March 2007 appellate jurisdiction under the Act was transferred from the regional to the administrative courts. The Act does not contain provisions on costs. Section 84 provides for the subsidiary application of the Code of Criminal Procedure in respect of a number of matters not set out in the Act, such as remuneration of experts and reimbursement of the expenses of witnesses, but counsel's fees are not mentioned.

2. The Code of Criminal Procedure

21. The Code of Criminal Procedure 1974, in force until April 2006, provided in Article 169 § 2 that when an accused was convicted the court had to order him to bear all the costs of the proceedings, including, *inter alia*, the fees of his or her court-appointed counsel. Article 170 § 1 provided that if the accused was acquitted or the criminal proceedings were discontinued the costs were to be borne by the State. In April 2006 those provisions were superseded by Articles 189 § 3 and 190 § 1 of the Code of Criminal Procedure 2005, whose wording is identical.

22. Article 265 §§ 2 and 4 of the 2005 Code provides that a judge presiding over a panel hearing a criminal case shall ensure order in the courtroom and may impose a fine of up to BGN 500 (equivalent to EUR 255.59) on anyone breaching that order. The fine can be set aside by the panel as a whole.

3. The State and Municipalities Liability for Damage Act 1988

23. Section 1 of the State and Municipalities Liability for Damage Act 1988 provides that the State is liable for damage suffered by individuals or legal persons as a result of unlawful decisions, actions or omissions by civil servants, committed in the course of or in connection with administrative action. Section 2(1)(3) provides for liability of the investigating or prosecuting authorities or the courts for damage resulting from the imposition of an administrative penalty where the penalty has been set aside. Section 4 provides that the State is liable for all pecuniary and non-pecuniary damage which is a direct and proximate result of the impugned decision, action or omission.

4. Case-law in relation to costs incurred in judicial review proceedings under the 1969 Act

24. The question of costs for expert opinions and witnesses in proceedings under the 1969 Act was settled by the Supreme Court in a 1985 interpretative decision (see тълк. реш. № 3 от 8 април 1985 г. по н. д. № 98/1984 г., ВС, ОСНК), in which it held that since the Act did not contain provisions in that respect, the provisions of the Code of Criminal Procedure 1974 should apply and that, in cases where a decision imposing an administrative sanction has been quashed, those costs are to be borne by the State. The interpretative decision did not deal with counsel's fees.

25. In an interpretative decision of 3 June 2009 (see тълк. реш. № 2 от 3 юни 2009 г. по тълк. д. № 7/2008 г., ВАС, ОСК) the Supreme Administrative Court dealt with the question whether after 1 March 2007, when appellate jurisdiction under the 1969 Act was transferred from the regional to the administrative courts (see paragraph 20 above), the administrative courts should award costs in judicial review proceedings under the Act. The court observed that there existed a certain inconsistency in the administrative courts' case-law on that point. Some courts awarded costs, whereas others did not, saying that they could be claimed by way of damages in separate proceedings under the 1988 Act. The court held that the administrative courts could not award costs in proceedings under the 1969 Act, as neither that Act nor the 1974 or 2005 Codes of Criminal Procedure made provision for them to do so.

COMPLAINTS

26. In his initial application the applicant complained under Article 6 § 1 of the Convention that he had been denied a fair trial, as domestic legislation had not laid down clear rules in relation to the award of counsel's

fees in proceedings under the 1969 Act, which had led to inconsistent case-law of the domestic courts on that point.

27. In that same application he further complained under Article 1 of Protocol No. 1 to the Convention that he had been deprived of the sums he had paid for legal representation in the proceedings under the 1969 Act, and under Article 13 of the Convention that he had not had effective remedies in that respect.

28. Lastly, the applicant complained under Article 14 of the Convention that he had been discriminated against *vis-à-vis* the State because the wording of Article 169 § 2 and Article 170 § 1 of the Code of Criminal Procedure 1974 suggested that if he lost his case he would have to bear all costs incurred in the proceedings, whereas if the State lost he would not be awarded costs. He also complained under Article 13 of the Convention that he had not had an effective remedy in that respect.

29. In a letter of 24 June 2008 the applicant, relying on Article 6 §§ 1 and 2 and Article 13 of the Convention, complained that he had not been proved guilty according to the law, and had been denied a fair trial because in the criminal proceedings against him the Ruse Regional Court had convicted him, holding that he had had the capacity of an official, whereas in three previous judgments the same court had found that he had not had that capacity, and had acquitted him on that basis. The applicant also complained that his conviction had been based on assumptions that his sentence had been too harsh, that the domestic courts had not granted his requests for the examination of witnesses and gathering of further evidence, and that in their judgments those courts had not responded to his arguments.

30. In yet another letter, this time of 29 August 2008, the applicant complained:

(a) under Article 6 § 1 and Article 13 of the Convention that he had been denied access to court in relation to the fine for contempt of court. He also complained that even if his legal challenge to the fine had been examined by the competent panel, that panel would not have been impartial, because it would have heard an appeal against a decision of its chairperson;

(b) under Article 10 and Article 13 of the Convention that the fine for contempt of court had infringed his freedom of expression. He also complained that the imposition of the fine had breached his rights under Article 1 of Protocol No. 1; and

(c) under Article 6 § 1 and Article 13 of the Convention that in the proceedings against Ms D.N. the principles of equality of arms and public hearing had not been respected, because the Ruse Regional Court had not granted his request for the hearing of 19 February 2007 to be adjourned, thus preventing him from presenting his arguments and contesting those of Mr D.N.

31. In letters of 9 October 2010 and 9 December 2011 the applicant complained under Article 6 §§ 1 and 2 of the Convention that the president

of the Ruse Regional Court's panel conducting the criminal proceedings against him had lacked impartiality and had refused to withdraw from the case, that he had interrupted his address by fining him for contempt of court, thus preventing him from putting forward his arguments, and that the transcript of the hearing of 10 December 2007 had been tampered with.

THE LAW

A. Complaints in respect of the allegedly inconsistent domestic case-law concerning the award of counsel's fees for proceedings under the 1969 Act, the inability to recoup such fees and the lack of an effective remedy in that respect

32. Relying on Article 6 § 1 of the Convention, the applicant complained of inconsistent domestic case-law concerning the award of counsel's fees incurred in proceedings under the 1969 Act. This Article, as relevant, provides as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

33. The applicant further complained of the refusal of the courts in the proceedings under the 1988 Act to allow his claim for counsel's fees, which he submitted had amounted to a deprivation of property, and of the lack of effective remedies in that respect. He relied on Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention, which provide as follows:

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.
>
> 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."

Article 13 of the Convention

> "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."

34. The Court must first determine whether the applicant's complaints comply with the admissibility requirements set out in Article 35 of the Convention, as amended by Protocol No. 14, which entered into force

on 1 June 2010 and covers all applications whose admissibility had not been decided by that time.

35. That Protocol added a new admissibility requirement to Article 35 § 3 which, in so far as relevant, now reads as follows:

> "The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:
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> ...
>
> (b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

36. This means that the Court must examine of its own motion whether: (a) the applicant has suffered a significant disadvantage; (b) respect for human rights as defined in the Convention and the Protocols attached thereto requires an examination of the application on the merits; and (c) the case was duly considered by a domestic tribunal (see *Korolev v. Russia* (dec.), no. 25551/05, ECHR 2010, and *Ladygin v. Russia* (dec.), no. 35365/05, 30 August 2011).

1. Whether the applicant has suffered a significant disadvantage

37. The Court has previously held that this criterion applies where, notwithstanding a potential violation of a right from a purely legal point of view, the level of severity attained does not warrant consideration by an international court (see *Ionescu v. Romania* (dec), no. 36659/04, 1 June 2010, and *Korolev*, cited above). The absence of any disadvantage can be based on criteria such as the financial impact of the matter in dispute or the importance of the case for the applicant (see *Ionescu*, cited above).

38. The Court observes that it has considered insignificant the pecuniary losses allegedly sustained by applicants in proceedings in which the amount in dispute was EUR 90 (see *Ionescu*, cited above), in delayed payment of EUR 25 (see *Gaftoniuc v. Romania* (dec.), no. 30934/05, 22 February 2011), in a case concerning enforcement of a judgment for EUR 34 (see *Shefer v. Russia* (dec.), no. 45175/04, 13 March 2012), in a case concerning a claim of pecuniary damages amounting to EUR 504 (*Kiousi v. Greece* (dec.), no. 52036/09, 20 September 2011), and in proceedings about failure by the State authorities to pay the applicant an amount of EUR 228 (*Burov v. Moldova* (dec.), no. 38875/03, 14 June 2011).

39. In the present case, the Court notes that the legal fees that the applicant incurred in the proceedings under the 1969 Act amounted to BGN 65 (equivalent to EUR 33.23). The Court takes note of the modest size of the pecuniary loss sustained by the applicant in those proceedings. It is true that a pecuniary loss cannot be measured in abstract terms: even modest pecuniary damage may be significant in the light of the person's specific

circumstances and of the economic situation of the country or region in which he or she lives. However, taking into consideration the applicant's personal situation, namely that he is a doctor, and the sum in dispute, which was less than the minimum monthly wage in Bulgaria at the relevant time, the Court finds that the pecuniary loss was of minimal significance to the applicant (see, *mutatis mutandis*, *Burov,* cited above, §§ 27-29, and *Fernandez v. France* (dec.), no. 65421/10, 17 January 2012).

40. The Court further notes that the applicant's later inability to recoup counsel's fees did not adversely affect the fairness of the proceedings for judicial review of the four administrative fines. The applicant was able to retain counsel in those proceedings. Counsel charged him a fee which cannot be regarded as excessive, and the applicant benefited from adequate representation – proved by the fact that he was eventually successful and obtained the quashing of the fines (see, *mutatis mutandis*, *P.W. v. Denmark* (dec.), no. 38986/97, 15 June 1999; *Schrieder v. Denmark* (dec.), no. 32085/96, 6 April 2000; *Dmitrijevs v. Latvia* (dec.), no. 62390/00, 7 November 2002; and *Ognyan Asenov v. Bulgaria*, no. 38157/04, § 44, 17 February 2011). Therefore the applicant's right to a fair trial was not impaired. The repercussions for the applicant of the courts' refusal to allow his claim by which he had sought to recoup counsel's fees were only financial and, as noted above, were minimal.

41. In those circumstances the Court finds that the applicant has not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention.

2. Whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits

42. The first safeguard clause contained in Article 35 § 3 (b) of the Convention compels the Court to nonetheless examine the case if respect for human rights so requires. This applies where a case raises questions of a general character affecting the observance of the Convention.

43. Turning to the present case, the Court does not perceive any reason warranting its examination on the merits. Moreover, the Court has already had opportunities to address issues of conflicting domestic courts' case-law (see *Beian v. Romania (no. 1)*, no. 30658/05, §§ 34-38, ECHR 2007-V (extracts); *Iordan Iordanov and Others v. Bulgaria*, no. 23530/02, 2 July 2009; and *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, 20 October 2011). Thus, it concludes that respect for human rights does not require an examination of the present case.

3. Whether the case was duly considered by a domestic tribunal

44. This second safeguard clause was designed to ensure that every case receives a judicial examination – either at national level or at European level – in order to avoid a denial of justice (see *Korolev*, cited above).

45. The Court does not find the facts of the present case to disclose a denial of justice at the domestic level. The applicant had the opportunity to put forward his arguments in adversarial proceedings, and his claim was considered at two levels of jurisdiction, the first-instance court ruling in his favour and the higher court rejecting his claim on appeal.

46. The Court concludes that the applicant's case was duly considered by a domestic tribunal within the meaning of Article 35 § 3 (b) of the Convention.

4. Conclusion

47. The requirements of the new inadmissibility criterion having been satisfied, the Court finds that this complaint must be declared inadmissible under Article 35 § 3 (b) of the Convention.

B. The remainder of the applicant's complaints

48. The Court has examined the remainder of the applicant's complaints as submitted by him. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

49. It follows that this part of the application must also be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President