

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

FOURTH SECTION

DECISION

Application no. 33065/05
Krastyo Damyanov KRASTEV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 15 May 2012 as a Chamber composed of:

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 23 August 2005,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Krastyo Damyanov Krastev, is a Bulgarian national who was born in 1934 and lives in Sinyo Bardo. The Bulgarian Government ("the Government") were represented by their Agent, Mrs N. Nikolova, of the Ministry of Justice.

A. The circumstances of the case

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

3. On an unspecified date in 2003 the applicant, a doctor, lodged a private criminal complaint against V.V. with the Mezdra District Court. The applicant claimed that V.V. had publicly defamed him by saying that the applicant had administered the wrong medicine to V.V.'s mother and that she had died as a result. The applicant also lodged a civil action for compensation for non-pecuniary damage which he claimed he had suffered.

4. By a judgment of 9 November 2004 the court acquitted V.V. and dismissed the applicant's civil action, finding that the defendant had publicly stated that the applicant had given an unspecified medicine to his mother and had failed to inform him of its nature. The court noted that this statement did not contain any accusation that the applicant had caused the death of the defendant's mother.

5. The judgment was pronounced publicly in the presence of the applicant and his counsel. The court noted that it was subject to appeal within a fifteen-day period following its pronouncement. The court further noted that in case of an appeal a hearing before the Vratza Regional Court was to be held on 20 January 2005. The judgment was pronounced without reasons, which were to be delivered later.

6. The applicant alleged that on several occasions he checked at the court's registry in order to determine whether the reasons for the judgment had been delivered, but to no avail. It appears that on 17 December 2004 the applicant brought the issue to the attention of the president of the court by submitting a written request to be served with the reasons.

7. On 29 December 2004 the applicant obtained the reasons.

8. On 4 January 2005 the applicant filed an appeal against the judgment. In a decision of 5 January 2005 the Mezdra District Court returned the appeal to the applicant as having been submitted after the expiry of the fifteen-day time-limit.

9. The applicant's appeal against this decision was dismissed by the Vratza Regional Court on 22 March 2005. The court stated that the deadline for lodging an appeal had been 24 November 2004. It noted that the time-limit for delivering the reasons was not related to the one for lodging an appeal. The court concluded that the belated delivery of the reasons had not impaired the applicant's right to make an effective appeal, as he could have lodged an appeal and presented additional arguments at a later stage.

B. Relevant domestic law and practice

1. Appeals against first-instance judgments in criminal cases

10. At the relevant time, an appeal was to be lodged with the first-instance court within fifteen days of the pronouncement of the judgment (Article 318 of the Code of Criminal Procedure 1974). The court would check whether the appeal satisfied the procedural requirements and, if so, send it to the court of appeal (Article 332).

11. The appeal against the judgment might be detailed, containing specific grounds for contesting the judgment, or open-ended (*бланкетна жалба*). In substance, an open-ended appeal might contain only a declaration that the first-instance judgment was wrong (реш. на ВтАС № 165 от 24.19.2009 по в.н.о.х. д. № 101/2009 г., and реш. № 135 от 1.07.2005 г. ВтАС по в. н. о. х. д. № 139/2005 г., н. о.). The practice of submitting open-ended appeals in criminal cases was, and continues to be, common in Bulgaria (see, among many others, реш. от 11.11.2004 г. на ВтАС по в.н.о.х.д. № 240/2004 г. н.о.; реш. № 24 от 12.03.2005 г. на ВтАС по в. н. о. х. д. № 3/2005 г., н. о.; and реш. от 28.09.2010 по в.н.о.х.д № 255/2010 на АС Варна).

12. Until the hearing and regardless of whether a detailed appeal or an open-ended appeal was filed, the appellant could submit additional written pleadings in order to supplement his appeal (Article 319 § 3 of the 1974 Code, реш. от 13.07.2004 г. на ВтАС по в. н. о. х. д. № 113/2004 г., н. о.).

13. The court of appeal was obliged to examine the lawfulness and the correctness of the entire judgment, regardless of the grounds of appeal specified by the parties (Article 313 § 1 of the 1974 Code). This state of affairs was valid even when, in the case of an open-ended appeal, the appellant did not supplement the appeal with additional arguments (реш. от 16.04.2004 г. на ВнАС по в.н.д. № 312/2003, н. о.; реш. от 18.01.2005 г. на ВтАС по в. н. о. х. д. № 234/2004 г., н. о.; and реш. от 18.05.2009 по в.н.ч.х.д. № 247/2009 на ОС Пазарджик).

14. The above-mentioned provisions were reproduced almost verbatim in the new Code of Criminal Procedure 2005 ("the 2005 Code") (Articles 314 § 1, 319, 320 § 3).

2. Reasons for the judgment in criminal cases

15. At the relevant time, in factually or legally complex cases the reasons for the judgment could be delivered after the judgment but not later than fifteen days following its pronouncement (Article 306 of the 1974 Code).

16. According to the case-law of the Supreme Court of Cassation, the periods for lodging an appeal and for delivering the reasons for a judgment

run independently and each party to the proceedings is duty-bound to observe the time-limit for lodging an appeal. This is so because the party could file an appeal and supplement it with additional arguments once the reasons for the judgment were delivered (реш. на ВКС № 664 от 13.12.2004 по н. д. № 326/2004 г., III н. о.).

17. Pursuant to the 2005 Code, the reasons for the judgment may be delivered after the judgment but not later than fifteen days following its pronouncement. In factually or legally complex cases the reasons for the judgment may be delivered within thirty days after its pronouncement (Article 308).

COMPLAINT

18. The applicant complained, without relying on a particular Convention Article, that, as a result of the belated delivery of the reasons for its judgment, the domestic court had thwarted his right to appeal against the judgment.

THE LAW

19. The applicant complained that he had not had access to the court of appeal because his appeal had been rejected as submitted out of time. His complaint falls to be examined under Article 6 § 1 which, in so far as relevant, provides that:

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

20. The Government argued, in particular, that it was open to the applicant to submit an open-ended appeal and he should not have waited for the reasons for the judgment to be delivered. They further maintained that the applicant could have requested the reopening of the proceedings or an extension of the deadline for submitting an appeal.

21. The applicant did not submit observations in reply.

22. The Court reiterates that the right to a fair hearing, as guaranteed by Article 6 § 1 of the Convention, embodies the "right to a court", one aspect of which is the right of access, namely the right to institute proceedings before courts in civil matters (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). While Article 6 § 1 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation, where such courts do exist the proceedings before

them must comply with the guarantees of Article 6 (see, among many other authorities, *Andrejeva v. Latvia* [GC], no. 55707/00, § 97, ECHR 2009-...).

23. Turning to the present case, the Court notes at the outset that the applicant lodged a private criminal complaint before the Vratza District Court but also participated in the proceedings as a civil claimant. Thus Article 6 applies to the proceedings at hand (see *Perez v. France* [GC], no. 47287/99, §§ 62-72, ECHR 2004-I) and the Court must examine whether by refusing to examine his appeal on the merits as submitted out of time the domestic courts unlawfully restricted the applicant's right of access to court.

24. The Court reiterates that the right of access to court is not absolute and may be subject to limitations, since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. The Court must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (see, among other authorities, *Angel Angelov v. Bulgaria*, no. 51343/99, § 35, 15 February 2007; *Kreuz v. Poland*, no. 28249/95, § 54, ECHR 2001-VI). Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Ashingdane v. the United Kingdom*, 28 May 1985, § 57, Series A no. 93).

25. The Court observes that in the present case the time-limit for lodging an appeal against the first-instance judgment was fifteen days. The applicant did not complain that the time-limit was too short. The Court recalls that time-limits such as the one at issue are designed to ensure the proper administration of justice and compliance with, in particular, the principle of legal certainty (see *Mikulová v. Slovakia*, no. 64001/00, § 52, 6 December 2005). It can be concluded therefore that the domestic court's decision not to admit the applicant's appeal on account of his failure to comply with the time-limit pursued a legitimate aim. It remains to be established whether such an approach was proportionate.

26. The Court observes that, in accordance with the relevant domestic provisions in force at the material time, the period for lodging an appeal against a first-instance judgment overlapped with the period for delivery of the reasons for the judgment. The Court takes into account the margin of appreciation afforded to States in regulating the right of access to court and the judicial procedure and notes that it is not called upon to assess, as such, the Bulgarian system of delivering reasons for convictions or acquittals and the rules regulating appeals against such judgments. It must confine its attention as far as possible to the issue raised by the specific case before it

(see *De Geouffre de la Pradelle v. France*, 16 December 1992, § 31, Series A no. 253-B).

27. In that connection, the Court notes that domestic law and practice provided for the possibility of filing an open-ended appeal.

28. In accordance with the case-law of the domestic courts, with which the applicant's counsel should have been familiar, the possibility to file an open-ended appeal is given to appellants in order to allow them to comply with the deadline for lodging an appeal. An appellant who files an open-ended appeal is relieved from the requirement to state the specific grounds for his or her appeal (see, by contrast, *Hadjianastassiou v. Greece*, 16 December 1992, § 36, Series A no. 252). Thus it is not necessary for the applicant or his lawyer to be familiar with the exact reasoning of the first-instance court. Moreover, once the reasons are delivered, the appellant may submit additional arguments or may withdraw his or her appeal. In any event, even if the applicant does not file additional arguments after being notified of the reasoned judgment, the court is still bound to conduct a full review of the first-instance judgment (see paragraphs 12 and 13 above).

29. In view of that and despite the fact that the domestic court, contrary to the relevant procedural rules, delivered its reasons with a significant delay, it was for the applicant in the present case to show the necessary diligence and lodge an appeal within the statutory deadline, even before acquainting himself with the reasoning contained in the judgment of the first-instance court. For the Court, the domestic courts' decision to reject his appeal for being out of time did not impair the very essence of the applicant's right of access to court and was not disproportionate in the circumstances.

30. Accordingly, the Court finds that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention. In these circumstances the Court need not examine whether the applicant should have requested the reopening of the case or an extension of the deadline.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı Deputy Registrar	Lech Garlicki President