CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 16463/02
by Vasilka Stoilova MARINA
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 12 February 2008 as a Chamber composed of:

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Rait Maruste,
Renate Jaeger,
Mark Villiger,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having regard to the above application lodged on 27 March 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Vasilka Stoilova Marina, is a Bulgarian national who was born in 1942 and lives in Plovdiv. She is represented before the Court by Mr M. Ekimdjiev and Ms S. Stefanova, lawyers practising in Plovdiv.

A. The circumstances of the case

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

1. The applicant's medical treatment

On 28 March 1994 the applicant underwent a surgical operation. In the course of the operation the persons performing it allegedly left through their negligence a blood-absorbing plug (a tampon) inside her body. Thereafter she allegedly suffered from recurrent abdominal pain, high blood pressure and head-aches. During the post-operation check-ups it was discovered that there was an abnormal lump in her body but all the efforts to ascertain the reasons for that remained unavailing.

In 1995 the applicant travelled to Germany on a private visit. As she had a sudden pain attack she underwent a fresh check-up. On 29 June 1995 she had a fresh operation. An object was discovered and removed from her body. The German doctors' opinion was that the object was a tampon unintentionally left during the previous operation.

2. Criminal proceedings in respect of alleged medical negligence

On 17 January 1996 the applicant filed a complaint with the Plovdiv District Prosecution Office. By an order of 10 April 1996 the Plovdiv District Prosecution Office opened a preliminary investigation against the surgeon who performed the operation, his assistants and the midwife.

On an unspecified date in 1997 an expert report was prepared for the investigation. The expert took the view that the operation had been very complicated, the mistake made had been not uncommon in the medical practice and therefore excusable.

By order of 15 December 1997 a prosecutor from the District Prosecution Office terminated the criminal proceedings.

The applicant appealed. On 5 February 1999 the Plovdiv Regional Prosecution Office confirmed the termination of the criminal proceedings. The applicant appealed again and the case was transmitted several times between various levels of the prosecution hierarchy.

On 16 July 1999 the applicant's counsel requested a joinder of a claim for damages. No decision was taken on this request.

Between August 2000 and September 2001 the file was transmitted three times between the Plovdiv District Prosecution Office and the Plovdiv

District Court. The court twice referred the case back to the prosecution authorities.

In a decision of 2 October 2001 the Plovdiv District Court terminated the proceedings as the criminal prosecution of the alleged criminal offence had become time-barred.

3. Civil proceedings for damages

On 29 March 1999 the applicant brought a claim for pecuniary and non-pecuniary damages in the amount of approximately EUR 1,000 against the surgeon, Mr. D, who performed the operation.

Between May 1999 and October 2000 more than five hearings were scheduled and at least four of them were adjourned as Mr. D was not duly summoned.

At the hearing held on 17 October 2000 the court for the first time dealt with issues other than the preliminary organisation of the trial.

Between October 2000 and January 2001 three hearings were held. Three other parties joined the proceedings. The hospital where the operation had been performed became a second defendant.

On 17 January 2001 the Plovdiv District Court stayed the proceedings pending the outcome of the criminal proceedings against the defendants.

The civil proceedings resumed on 16 May 2002. Between 4 July 2002 and 26 May 2005 the Plovdiv District Court held seventeen hearings. Eight hearings were adjourned as the parties were not duly summoned. No procedural steps were taken and no substantive issues were dealt with at those hearings. Three other hearings were adjourned as the applicant failed to appear in court. The last hearing was held on 26 May 2005.

The Plovdiv District Court gave judgment on 1 July 2005. On the basis of the medical expert report the court concluded that the German surgeon had been wrong in believing that the object which he had found in the applicant's body had been a silk plug "forgotten" by the Bulgarian surgeon. In line with the medical expert report, the court established that the object had been a granuloma and that the silk fibres in it had been remains of the thread whereby the applicant's surgical opening had been stitched. The court therefore dismissed the claim.

The applicant appealed to the Plovdiv Regional Court. By a final judgment of 9 November 2005 the Plovdiv Regional Court following a hearing held on 27 October 2005 upheld the lower court's judgment approving its conclusions. The court also held that in any event the claim had been brought after the expiry of the five-year limitation period for claims for damages (the statement of claim had been filed on 29 March 1999 whereas the operation had been performed on 28 March 1994).

4. The applicant's attempt to obtain from the authorities documents relevant to her application

On 4 June 2002 the applicant filed a request with the Plovdiv District Court to examine the documents from the criminal proceedings case-file as she needed information in respect of her application lodged with the Court. On 6 June 2002 the request was refused.

On 11 July 2002 the applicant filed a request with the president of the Plovdiv Regional Court for a copy of her application to join the criminal proceedings as civil plaintiff as this had been requested by the Registry of the Court. By an order of 12 July 2002 the President of the Plovdiv District Court refused the request. He reasoned that the letter of the Registry did not specify the relevant criminal case and that therefore the applicant had not shown that she needed the requested document.

COMPLAINTS

1. The applicant complained under Article 6 of the Convention that the length of the civil proceedings had been excessive.

2. The applicant complained, relying on under Articles 6 and 13, that the prosecution authorities and the criminal courts had failed to examine the applicant's request for a civil claim to be joined to the pending criminal proceedings.

3. The applicant further complained that the length of the criminal proceedings against the alleged offenders had been excessive and that she did not have a remedy in that respect.

4. The applicant also complained of having been hindered in the exercise of her right to petition the Court as the authorities had refused to provide her with relevant documents.

THE LAW

1. The applicant complained under Article 6 § 1 that the length of the civil proceedings had been excessive.

The Court considers that it cannot, on the basis of the case-file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

2. The applicant further complained that in 1999 her civil claim had not been joined to the pending criminal proceedings. She also complained about the length of the criminal proceedings against the alleged offenders, that she had no effective remedies in this respect and that the authorities had

hindered her in the exercise of her right to bring proceedings before the Court.

In the light of all the material in its possession, and insofar 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.

It follows that the remainder of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaint concerning the length of the civil proceedings;

Declares the remainder of the application inadmissible.

Claudia Westerdiek
Registrar

Peer Lorenzen
President