

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

FOURTH SECTION

DECISION

Application no. 948/05
by Yordanka Petrova NAYDENOVA
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 11 October 20101 as a Committee composed of:

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 3 January 2005,

Having regard to the observations submitted by the respondent Government ,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Yordanka Petrova Naydenova, is a Bulgarian national who was born in 1955 and lives in Montana. The Bulgarian Government ("the Government") were represented by their Agent, Mrs R. Nikolova, of the Ministry of Justice.

A. The circumstances of the case

The applicant suffers from a number of different diseases and since 1991 has undergone several examinations by expert medical commissions. As a result, she has been determined as having different degrees of disability,

entitling her to a disability pension, which she appears to have received until 2002.

In a decision of 24 April 2002 the Regional Expert Medical Commission ("the REMC") re-evaluated the applicant's disability status and reduced it to forty per cent. As a result, she was no longer entitled to a disability pension. Since 2000, under Bulgarian law, a person needs a disability status of at least fifty per cent for pension entitlement (see "Relevant law and practice" below).

The applicant appealed to the National Expert Medical Commission ("the NEMC"), contesting her disability percentage.

In a decision of 7 November 2002 the NEMC partly quashed the decision of the REMC and reduced the applicant's disability percentage even further, fixing it at thirty per cent.

On 27 November 2002 the applicant appealed against the decision of the NEMC to the Sofia City Court. She argued that her health condition was irreversible and had not changed since 1991. The applicant further noted that the disability percentages newly determined by the REMC and NEMC no longer entitled her to a disability pension and she requested the court to conduct a new assessment of her medical condition by a court-appointed medical expert and to increase her disability percentage to fifty per cent or more. She also contended that because of her state of health it was impossible for her to find a job. In any event, she was unable to work. She submitted all her medical records. The applicant was not legally represented.

On 22 March 2004 the City Court quashed the decision of the NEMC of 7 November 2002. It held that by decreasing the disability percentage from forty to thirty percent the NEMC had violated the principle of not allowing a decision at appeal to put an appellant in a worse position in the absence of an appeal by the other party (*reformatio in pejus),* which it considered applicable to such administrative proceedings. The court therefore concluded that the said decision had been taken in violation of the procedural rules, which rendered it unlawful. It did not examine any of the applicant's grounds of appeal or appoint a medical expert to reassess her degree of disability.

The effect of the Sofia City Court's judgment was that the decision of the REMC of 24 April 2002 assessing the applicant's disability at forty percent remained in force. The applicant did not appeal against that judgment.

Following an appeal by the NEMC, the case was examined by the Supreme Administrative Court. The NEMC argued that the principle of *reformatio in pejus* was not applicable to proceedings before an administrative body. The applicant contested that argument and urged the Supreme Administrative Court to uphold the previous court's judgment. It is not clear whether she did this in a court hearing or in written pleadings.

On 8 November 2004 the Supreme Administrative Court, without appointing a medical expert to re-evaluate the applicant's health condition, quashed the City Court's judgment and upheld the decision of the NEMC. The court found that the *reformatio in pejus* rule applied only to the judicial stage of administrative review proceedings and not to review proceedings before higher administrative bodies. It stated the following:

> "It should therefore be concluded that if, in applying correctly the substantive provisions and the rules of administrative procedure, the NEMC, in its capacity as a higher administrative body, has quashed an administrative decision of the REMC and issued a new expert decision, [that decision] should be regarded as a lawful administrative act. In view of these considerations, the judgment of the Sofia City Court should be quashed and the dispute examined on the merits, dismissing the appeal of Yordanka [Naydenova] against the decision of the NEMC ."

B. Relevant domestic law and practice

1. Decisions determining disability and appeals against them

At the material time, the procedure for determining disability was governed by the Regulations for the Implementation of the People's Health Act of 1974 ("the RIPHA"), the Social Security Code of 1999, in force from 1 January 2000, and the Regulation on Determining Disability of 2000 ("the Regulation"). The determination of disability status was within the competence of the REMC and the NEMC. The REMCs were attached to state-owned medical establishments and appointed by the directors of the regional health centres following the approval of the Minister of Health. The presidents and members of the commissions, who were exclusively medical professionals, were remunerated under employment contracts they entered into with the medical directors of the local state-owned medical establishments (section 8(4) and (5) of the RIPHA). The NEMC was attached to the Ministry of Health. Its director was appointed by the Minister of Health (section 9(1) of the RIPHA).

There were no particularly detailed rules governing the procedure before the commissions. The Regulation provided that they had to proceed on the basis of an examination of the person concerned and of medical documents In certain cases the commissions could invite officials from the National Insurance Institute, the Labour Ministry, representatives of the employer, the Union of the Disabled, or other officials to take part in the commissions' meetings and give any relevant information. It is not clear whether this could be done upon the request of the disabled person. The commissions could also request the help of psychologists, social workers and other specialists where necessary (sections 11 and 16 of the Regulation).

The decisions of the REMC could be appealed against before the NEMC. Until 2000 there was no statutory provision for judicial review of NEMC decisions. Nevertheless, after 4 February 1999 the Supreme Administrative

Court started allowing judicial appeals against the decisions of medical commissions (see *Mihailov v. Bulgaria*, no. 52367/99, § 24, 21 July 2005, and *I.D. v. Bulgaria*, no. 43578/98, §§ 32-34, 28 April 2005).

From 1 January 2000, under Article 26 § 1 of the Social Security Code NEMC decisions were subject to judicial review. When exercising such review it has been a common practice for the domestic courts, at least in the period since 2002, to examine not only the formal aspects of the decisions of the NEMC but also their merits and, in particular, the reasons for determining a certain disability percentage. In such cases, upon the claimant's request the domestic courts ordered a new evaluation of disability status, which was carried out by court-appointed experts (see *Реш. № 1713 от 26 февруари 2003 г. на ВАС по адм. д. № 8325/2002 г.*; *Реш. № 10674 от 25 ноември 2003 г. на ВАС по адм. д. № 3589/2003 г.*; *Реш. № 564 от 26 януари 2004 г. на ВАС по адм. д. № 4079/2003 г.*; *Реш. № 4636 от 21 май 2004 г. на ВАС по адм. д. № 1547/2004 г.*; *Реш. № 7216 от 06 август 2004 г. на ВАС по адм. д. № 6952/2003 г.*; *and Реш. № 9270 от 11 ноември 2004 г. на ВАС по адм. д. № 10829/2003 г.*).

Since 1 January 2005 the determination of disability has been governed by the Health Act of 2005 and the Regulation on the Determination of Disability by Medical Experts of 2005. Section 112(1)(4) of the Health Act provides that the decisions of the NEMC are reviewable by the Sofia City Court.

2. Disability pension

Article 71 of the Social Security Code of 1999, in force since 1 January 2000, provides that individuals with a disability percentage of higher than fifty per cent are entitled to a disability pension.

COMPLAINTS

The applicant complained under Article 6 § 1 of the Convention that she had been denied effective access to a Court because the domestic courts had not commissioned a new medical assessment of her disability status, as a result of which the merits of her claim remained unexamined.

THE LAW

The applicant complained that she had been denied effective access to court because the national courts had not ordered an independent medical assessment of her condition and therefore had not examined the merits of

her appeal. She relied on Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal ..."

The Government argued that the applicant's rights under Article 6 § 1 had not been infringed. They contended that the domestic courts had examined the merits of the applicant's claim and had dismissed it as manifestly ill-founded. The scope for judicial review of administrative acts was limited and depended on the points raised in the cassation appeal. Such limitations on judicial review were not *per se* contrary to the Convention. The NEMC had been the body competent to determine the applicant's correct disability percentage, and the evaluation had been carried out in accordance with the applicable legislation. Furthermore, the applicant had not submitted any written evidence before the domestic courts capable of casting doubts on the NEMC's conclusions. Lastly, the Government pointed out that the reduction of the applicant's disability percentage by the NEMC had not adversely affected her because in any event the initial percentage determined by the REMC – forty per cent – was also below the fifty-percent threshold for a disability pension.

The Court will proceed on the basis that in principle the proceedings about which the applicant complains were decisive for her right to a disability pension, and therefore, for her civil rights.

In so far as the applicant's complaint concerns the failure of the Sofia City Court, in its judgment of 22 March 2004, to examine the arguments presented in her appeal of 27 November 2002 and to assess the degree of her disability, the Court observes that the applicant has not shown that she appealed against the judgment of the Sofia City Court, which had the effect that the decision of the REMC of 24 April 2002 fixing her disability percentage at forty per cent – below the threshold for a pension – remained in force. The Court notes that the respondent Government have not raised an objection concerning the exhaustion of domestic remedies and the application was introduced more than six months after the Sofia City Court's judgment. However, the Court does not need to decide whether the complaint concerning the judgment of 22 March 2004 should be regarded separately and, consequently, whether this complaint is time-barred. That is so because the application is in any event manifestly ill-founded for the reasons set out below.

In particular, even assuming that the Sofia City Court erred by only concentrating on the *reformatio in pejus* issue and not examining the dispute about the applicant's disability percentage, the Court observes that the applicant could nevertheless have obtained a decision on the merits of the dispute by appealing against the Sofia City Court's judgment. She has not shown that she has done so. In the proceedings before the Supreme

Administrative Court initiated by the NEMC, the applicant only contested the arguments of the NEMC with regard to the *reformatio in pejus* issue, and even urged the court to uphold the Sofia City Court's judgment, the effect of which had been, as noted above, that the decision of the REMC of 24 April 2002, fixing the applicant's disability level at forty percent, was upheld. The applicant has not shown that before the Supreme Administrative Court she argued that the question of her disability percentage should be re-examined and a medical expert should be appointed. In these circumstances, it is not surprising that the Supreme Administrative Court limited its examination of the case to the issues raised before it. Moreover, it is not entirely clear whether it was open to the Supreme Administrative Court, in a situation where only the NEMC, not the applicant, had appealed against the Sofia City Court's judgment, to reassess the applicant's degree of disability beyond the forty per cent at which it had been fixed by the REMC. The above-mentioned specific features of the present case distinguish it from other cases against Bulgaria concerning the unduly narrow scope of review of decisions of the NEMC (see *Mihailov* and *I.D.*, both cited above). In the present case, the Supreme Administrative Court acted on the appeal lodged by the NEMC, not the applicant, and its judicial review was naturally circumscribed by the parties' submissions. The situation which obtained was the result of the applicant's own procedural behaviour.

In these circumstances, the Court does not find any indication that the authorities deprived the applicant of effective access to a court by limiting the scope of judicial review in the proceedings at hand.

It follows that the application is manifestly ill-founded within the meaning of Article 35 § 1 of the Convention and must be dismissed in accordance with its Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı
Deputy Registrar

Päivi Hirvelä
President