CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

Application no. 50819/99
by Daniela Marinova PAVLOVA
against Bulgaria

The European Court of Human Rights (First Section), sitting on 19 May 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar,*

Having regard to the above application lodged on 22 February 1999,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Daniela Marinova Pavlova, is a Bulgarian national who was born in 1970 and lives in Sofia. She was represented before the Court by Ms V. Adirkova-Georgieva, a lawyer practising in Sofia. The respondent Government were represented by Ms M. Kotzeva, co-agent, of the Ministry of Justice.

A. The circumstances of the case

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

On 7 November 1996 the applicant went to the Ninth Police Department in Sofia, where she had been summoned pursuant to a complaint by an acquaintance of hers. She was questioned. The applicant alleged that during the questioning she was beaten on the head by three police officers.

On 8 November 1996 the applicant went to hospital, where she was examined and underwent tests. In his diagnosis, dated 11 November 1996, the medical doctor who examined the applicant established that there was curdled blood in her left auditory canal and a big perforation of her left tympanum membrane with haematomas at the edges. The applicant's hearing with both ears was reduced. According to the doctor, the applicant's diagnosis was traumatic rupture of the left tympanum membrane and neuritis of both auditory nerves.

On 11 November 1996 the applicant was also examined by another medical doctor. He found that the applicant was complaining from headache and reduced hearing with both ears. He also found that there was a haematoma of a violet-reddish colour on the back of her left ear. On the basis of this diagnosis and the applicant's examination, it was concluded that she had a traumatic rupture of the left tympanum membrane with haematoma of the ear, reduced hearing with both ears and traumatic neuritis of both auditory nerves.

On 17 January 1997 the applicant complained to the Sofia Regional Military Prosecutor's Office about the alleged beating and requested the opening of criminal proceedings against one of the police officers who had allegedly ill-treated her. On 10 April 1997 that Office refused to open criminal proceedings. It reasoned that the applicant had been at the police station on 7 November 1996, whereas the relevant medical documents were dated 11 November 1996. There were therefore no grounds on which to establish that the applicant had been beaten by the police officer.

On 28 December 1998 the applicant appealed to the Military Appellate Prosecutor's Office. On 17 March 1999 that Office upheld the decree. It reasoned that the applicant's allegation that she had been beaten was not supported by any evidence.

On appeal of the applicant on 21 April 1999 the Supreme Cassation Prosecutor's Office quashed the refusal to open criminal proceedings and remitted the case to the Sofia Military Prosecutor's Office with instructions to carry out an investigation with a view to determining whether the police officers had caused the applicant a bodily injury with a view to extracting a confession.

On 10 September 1999 the Sofia Regional Military Prosecutor's Office instituted criminal proceedings against two of the police officers who had allegedly beaten the applicant.

On 15 November 1999 the Sofia Regional Military Prosecutor's Office discontinued the proceedings, reasoning that the available evidence – witness testimony and written materials – did not provide a sufficient factual basis to indict and try the police officers. The applicant's statements were unreliable, because, as indicated by a medical report drawn up during the investigation, she suffered from a personality disorder and could not give correct testimony.

COMPLAINTS

The applicant complained that she had been ill-treated by the police officers. She also complained that the authorities had failed to effectively investigate the incident.

THE LAW

On 28 January 2004, by decision of the President of the Chamber, notice of the application was given to the respondent Government under Rule 54 § 2 (b) of the Rules of Court. They were invited to submit written observations on the admissibility and merits of the case.

The Government's observations were submitted on 30 July 2004. On 4 August 2004 the applicant was invited to submit her observations in reply before 29 September 2004. She did not submit observations within this time-limit, nor did she ask the Court for any extension of time.

On 25 November 2004 the Court sent, by registered mail with acknowledgement of receipt, letters to the applicant's representative and to her personally, informing them of the terms of Article 37 § 1 (a) of the Convention. They were further warned that failure to reply might lead the Court to conclude that the applicant no longer intended to pursue her application. The applicant received this letter on 22 December 2004 and her representative did not claim it from the post office. The applicant did not reply.

Having regard to the foregoing, the Court finds that the applicant does not intend to pursue her application within the meaning of Article 37 of the Convention, which, so far as material, provides as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> (a) the applicant does not intend to pursue his application; ...
>
> ...
>
> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires."

Furthermore, the Court considers that respect for human rights as defined in the Convention and the protocols thereto does not require the continued examination of the application (Article 37 § 1 *in fine*).

In these circumstances, the Court concludes that the application should be struck out of its list of cases in accordance with Article 37 of the Convention.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Søren NIELSEN Registrar	Christos ROZAKIS President