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

FIFTH SECTION

DECISION

Application no. 59546/08
Dimitar Tsvyatkov ZAGORSKI
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 30 June 2016 as a Committee composed of:

Khanlar Hajiyev, *President,*
Faris Vehabović,
Carlo Ranzoni, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 19 November 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Dimitar Tsvyatkov Zagorski, is a Bulgarian national, who was born in 1928. He passed away on 9 December 2012. In a letter dated 17 April 2015 his heirs – his son Mr Tsvyatko Dimitrov Tsvetkov and his daughter Ms Radka Dimitrova Klisurova – expressed their wish to continue the application in his stead.

2. The applicant and subsequently his heirs were represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

A. The circumstances of the case

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

4. On 18 December 2003 the applicant's wife, Mrs Dona Zagorska, who was suffering from cancer, underwent an operation. She was prescribed a course of chemotherapy, which was to start several days after the operation. However, the first chemotherapy session could not start until 30 January 2004, because the establishment where the treatment was to be carried out – the Plovdiv oncology clinic – did not have the necessary drugs in stock. The applicant had to buy the drugs himself, even though pursuant to the applicable domestic regulations the Ministry of Health was obliged to supply them free of charge.

5. Mrs Zagorska's next chemotherapy sessions were carried out as scheduled, with drugs supplied by the Ministry. Despite the treatment, on 19 July 2004 Mrs Zagorska died from the illness.

6. On 18 October 2005 the applicant brought an action under the State and Municipalities Responsibility for Damage Act ("the SMRDA", see paragraph 10 below) against the Ministry of Health and the Plovdiv oncology clinic. He claimed from them the amount he had paid for the missing drugs and compensation for non-pecuniary damage on account of the suffering caused to him by his wife's death.

7. In a judgment of 12 December 2007 the Plovdiv Regional Court ("the Regional Court") dismissed entirely the applicant's claims against the Plovdiv oncology clinic and partially allowed his claims against the Ministry of Health. In particular, in respect of non-pecuniary damage, it agreed that the Ministry of Health had indeed failed in its obligation to provide the necessary drugs in due time. It was not satisfied that there was a causal link between that failure and Mrs Zagorska's death, but it considered well-founded the applicant's claim that he had suffered also because of the uncertainty during the period when the drugs had been unavailable.

8. Upon appeal, on 19 May 2008 the Plovdiv Court of Appeal ("the Court of Appeal") found the applicant's claims inadmissible and discontinued the proceedings. Relying, in particular, on section 6(1) of the SMRDA (see paragraph 11 below), it held:

> "It is thus clear that the damage claimed did not result from any relationship between the plaintiff, on one side, and the Ministry of Health and the Plovdiv oncology clinic, on the other. The relationship existed between his wife Dona Zagorska and the respondents, in connection with her treatment. The SMRDA ... aims at compensating damage in cases where it stems from administrative actions or inaction, after the latter has been found to be unlawful ... Accordingly, it is a prerequisite for bringing a claim that there has been some relationship between the victim [of an unlawful action] and the bodies under section 1 ... of the SMRDA, which means in turn that only the subject of this relationship has standing to bring an action. In the present case, the plaintiff has not been a party to any relationship with the respondents and does not have standing to bring an action under section 1 of the

> SMRDA. Section 6 of the SMRDA indicates when it is possible for heirs to participate in the proceedings, but the present case does not meet these statutory requirements."

9. In a final decision of 6 August 2009 the Supreme Court of Cassation refused to accept for examination an appeal on points of law lodged by the applicant.

B. Relevant domestic law

10. Section 1(1) of the State and Municipalities Responsibility for Damage Act (*Закон за отговорността на държавата и общините за вреди*, "the SMRDA") provides that the State and municipalities are liable for damage caused to private individuals and legal entities as a result of unlawful decisions, acts or omissions by bodies or officials acting on their behalf.

11. Section 6(1) of the Act provides that in the event that the person who has suffered damage (*увреждения*) dies, the right to compensation in respect of pecuniary damage is inheritable in all cases, and the right to compensation in respect of non-pecuniary damage is inheritable only where the person has himself or herself brought the action.

COMPLAINTS

12. The applicant complained under Article 6 § 1 of the Convention that the tort claim he had brought before the domestic courts had not been examined and had been found to be inadmissible. He also relied on Articles 3 and 13 of the Convention and Article 1 of Protocol No. 1.

THE LAW

13. The Court considers it appropriate to examine the complaints above under Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

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

14. The applicant passed away on 9 December 2012 and his heirs, Mr Tsvyatko Dimitrov Tsvetkov and Ms Radka Dimitrova Klisurova, expressed the wish to pursue the application in his stead (see paragraph 1 above). The Government contested their entitlement to do so. The Court is of the view that it does not have to decide on the *locus standi* of the

applicant's heirs, as it considers the application in any event inadmissible for the reasons below.

15. The Government argued that the Plovdiv Court of Appeal had been right in dismissing the applicant's claim as inadmissible, and that it had correctly applied the relevant provisions of the SMRDA. The applicant's heirs pointed out that section 1 of the SMRDA entitled anyone claiming to have suffered damage as a result of actions or failures to act on the part of public bodies to seek compensation, and that the applicant had sought such compensation in relation to his own suffering resulting from failures on the part of the Ministry of Health.

16. The Court observes that the applicant brought a tort action against the Plovdiv oncology clinic and the Ministry of Health, alleging that their failure to provide in time the necessary drugs for his wife had caused him pecuniary and non-pecuniary damage. Even though his claims were examined on the merits and partially allowed by the first-instance Regional Court, the Court of Appeal found ultimately that they were inadmissible (see paragraphs 7-8 above). The Court of Appeal was of the view that the applicant had no standing to claim damages in relation to his late wife's treatment and death, because he had not been "party to any relationship" with the respondent State bodies.

17. The parties' main disagreement was on the question whether the Court of Appeal's interpretation of domestic law, leading to its finding that the applicant's claim was inadmissible, was correct (see paragraph 15 above). However, it is not the Court's task to substitute the national courts' interpretation of domestic law with its own, and it is not called upon to deal with errors of fact or law allegedly committed by the national courts (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 54, ECHR 1999-I; *Yagtzilar and Others v. Greece*, no. 41727/98, § 25, ECHR 2001-XII; *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 803-4, 25 July 2013). It should not act as a court of fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015).

18. In the present case, having regard to the reasons advanced (see paragraph 8 above), the Court finds no indication that the manner in which the Court of Appeal interpreted and applied domestic law was arbitrary or manifestly unreasonable.

19. It follows that the present application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 July 2016.

Milan Blaško
Deputy Registrar

Khanlar Hajiyev
President