



The conflicting case-law which affected the applicants has been rectified appropriately by the Bulgarian Supreme Court of Cassation

In today's **Chamber** judgment¹ in the case of [Mariyka Popova and Asen Popov v. Bulgaria](#) (application no. 11260/10) the European Court of Human Rights held, by a majority, that there had been:

no violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned the dismissal of the applicants' legal action by the Supreme Court of Cassation as a result of divergences in that court's case-law.

The Court considered that there existed "profound and long-standing differences" as to the interpretation of section 407 sub-paragraph 1 of the Trade Act by the Bulgarian Supreme Court of Cassation, which had affected the applicants. However, the domestic legislation contained a mechanism capable of providing redress for the situation. This remedy had been used shortly after the delivery of the decisions in the applicants' case and within a reasonable time of the point when this discrepancy had become clear. It had led to harmonisation of the case-law in this area.

Principal facts

The applicants, Mariyka Todorova Popova and Asen Asparuhov Popov, Bulgarian nationals, are a married couple who were born in 1941 and 1936 respectively and live in Dorkovo.

In May 2004 the applicants' daughter died in a road-traffic accident. Criminal proceedings were brought against S.V., the driver who had caused the accident. Mr Popov and Ms Popova, the deceased woman's son and husband and the other victim of the accident joined the proceedings as civil parties. The court found S.V. guilty of having negligently caused the applicants' daughter's death and inflicted injuries on the other victim. It ordered S.V. to pay damages.

The applicants and the three other civil parties were unable to recover the sums owed to them because S.V. was declared insolvent. Acting separately, they brought an action against S.V.'s insurance company. In several judgments, the first-instance and appeal courts ruled that the claimants were entitled to sue the insurer of the person who had caused the accident, even though the latter had already been ordered to pay damages, given that they had been unable to recover the sums awarded.

Furthermore, in a judgment of 21 February 2008, the Sofia City Court found in the applicants' favour and ordered the insurance company to pay them compensation. The Sofia Court of Appeal set aside that judgment, finding that the applicants were not entitled to sue the insurance company, given that they had already obtained a court order against the insured person for the same amounts and in respect of the same event, namely their daughter's death. Mr and Ms Popovi lodged an appeal on points of law. They argued that there was a contradiction between the appeal court's conclusion on the applicability of section 407(1) of the Trade Act to their case, and the conclusion reached by the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Supreme Court of Cassation in similar cases. The Supreme Court of Cassation dismissed their appeal on points of law as inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicants complained about the dismissal of their action. They submitted that discrepancies in the Supreme Court of Cassation's case-law concerning the interpretation of section 407(1) of the Trade Act had led to a violation of their right to fair civil proceedings.

The application was lodged with the European Court of Human Rights on 25 January 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
André **Potocki** (France),
Síofra **O'Leary** (Ireland),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that, in the applicants' case, the bench of the Supreme Court of Cassation had interpreted the domestic legislation in such a way that the applicants had been deprived of the possibility of establishing the liability of the offender's insurance company. However, other benches of the same court had taken precisely the opposite position after examining the actions brought by the three other civil parties.

It was clear from a review of the domestic case-law in this area that there existed two diverging approaches to the interpretation of section 407(1) of the Trade Act, which regulated the arrangements for bringing an action for damages against an insurer. The two alternative approaches had had significant repercussions for the right to fair proceedings, both for the victims of road-traffic accidents and for insurance companies. This question, on the admissibility of such litigation, was decisive for the outcome of this kind of dispute and could potentially have affected a large number of cases. Thus, the Court noted that the first diverging decision dated from 2006, that an increased number of contradictory decisions were delivered in 2009, and that this situation persisted until 2010. The Court considered that this lapse of time, which did not strike it as excessive, had to be assessed in the light of the circumstances of the case. In particular, the Court took into consideration the potentially high number of cases relating to road-traffic accidents.

The Court then noted that the domestic legislation contained a mechanism capable of providing redress for this situation, namely the procedure provided for in Article 292 of the new Code of Civil Procedure, under which one of the judicial benches at the Supreme Court of Cassation could ask the same court to provide guidance on the interpretation of the relevant provisions of domestic law. On 17 March 2010, while examining a similar case, one of the benches of the Supreme Court of Cassation had noted the existence of these case-law divergences with regard to the interpretation of section 407(1) of the Trade Act and had submitted a request for an interpretative judgment to the commercial division of the Supreme Court of Cassation. That mechanism had been set in motion

shortly after the adoption of the Supreme Court's decision in the applicants' case. The relevant period coincided with the entry into force of the new Code of Criminal Procedure, which had introduced new rules on the admissibility and examination of appeals on points of law. The Supreme Court of Cassation had had to adapt its functioning to this new procedural legislation. On 6 June 2012 the Supreme Court of Cassation delivered its interpretative judgment on the question put to it, which had resulted in harmonisation of its case-law.

The Court did not overlook the fact that the interpretation adopted by the Supreme Court of Cassation would have been favourable to the applicants had their appeal on points of law been examined after 2010. Nonetheless, the Court reiterated that the requirements of legal certainty and the protection of the legitimate confidence of the public did not confer an acquired right to consistency of case-law.

The Court concluded that the principle of legal certainty had not been infringed in the present case and that, in consequence, there had been no violation of Article 6 § 1.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.