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

FIRST SECTION

CASE OF MANCHEVA v. BULGARIA

(Application no. 39609/98)

JUDGMENT

STRASBOURG

30 September 2004

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Mancheva v. Bulgaria,

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

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mr V. ZAGREBELSKY, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 9 September 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39609/98) against the Republic of Bulgaria lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Ms Minka Slavcheva Mancheva ("the applicant"), on 13 November 1997.

2. The applicant, who had been granted legal aid, was represented by Ms E. Nedeva, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their agents, Mrs G. Samaras and Mrs M. Dimova, of the Ministry of Justice.

3. The applicant alleged, relying on Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention, that she was unable to obtain payment from a State body of the sums awarded to her under a final judicial decision and that Bulgarian law did not provide an efficient mechanism for the collection of debts owed by state institutions.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. By a decision of 19 December 2002, the Court declared the application admissible. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

7. On 12 February 2003 the applicant submitted an objection challenging the representative power of the Government's agent on the basis of alleged deficiencies in domestic regulations. The Court rejected the objection.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant is a Bulgarian national, who was born in 1968 and at the relevant time lived in Svoboda, the region of Haskovo.

9. The applicant used to work in the village of Svoboda, with the Home Patronage branch of the Chirpan District Social Care Centre (Домашен социален патронаж, Общински център за социални грижи). At the relevant time, Social Care Centres were State administrative bodies funded by the State and municipal budgets.

10. On 3 December 1992 the applicant suffered an accident at work. Subsequently she underwent surgical operations. She was unfit for work for at least six months and continued experiencing health problems for several years thereafter.

11. On 20 July 1993 the applicant instituted civil proceedings against her former employer, the local Home Patronage, claiming pecuniary and non-pecuniary damages. A representative for Home Patronage took part in the proceedings apparently maintaining that the applicant was responsible for the accident and that the claims were excessive.

12. On 31 March 1995 the Chirpan District Court partially granted the applicant's claim and awarded her 15,000 Bulgarian levs ("BGL") in non-pecuniary damages and BGL 4,500 in costs, plus statutory interest.

13. On 20 April 1995 the defendant, the Home Patronage, lodged an appeal with the Stara Zagora Regional Court.

14. According to the Government, on 17 July 1995 the Social Care Centre sent to the applicant a registered letter inviting her "to collect BGL 15,000" but the applicant refused receipt of the letter.

15. According to the applicant, as of 30 September 1995 the proceedings before the Regional Court were still pending.

16. On an unspecified date these proceedings ended and the District Court's judgment became final and enforceable.

17. Following a conversation between the applicant and employees of the Social Care Centre, on 5 May 1996 the Social Care Centre sent to the applicant a letter inviting her "to collect BGL 15,000".

18. On 9 May 1996 the applicant submitted a written request to the District Social Care Centre insisting on payment in compliance with the District Court's judgment, including all interest and costs. She offered her calculation of the interest that had accrued since the relevant starting date, 20 July 1993, and stated that the amount due was BGL 40,620.

19. The applicant, who at that time lived in another town, authorised another person to receive the money.

20. According to "minutes", drawn up by the accountant and two other employees of the Social Care Centre, on 15 May 1996 they withdrew BGL 15,000 from the Centre's bank account but the applicant's representative refused to accept the money.

21. On 3 June 1996 the Social Care Centre wrote to the applicant stating that they "wished to pay the damage sustained, in the amount of BGL 15,000", and invited her to visit the Centre for that purpose on 7 June 1996. The letter also stated that the Centre was "free from any obligation to pay interest on the amount since the date of the conversation with [the applicant] held in the presence of [the Centre's] employees".

22. On 6 June 1996, upon the applicant's request, the Chirpan District Court issued a writ of execution ordering the Home Patronage to pay to the applicant BGL 15,000 principal, BGL 4,500 in costs, and interest as from 20 July 1993.

23. On 6 June 1996 the applicant submitted a request to the competent enforcement judge seeking the institution of enforcement proceedings. That was refused and the applicant was informed, upon her complaints to the enforcement judge, the Regional Court and the Ministry of Justice, that under Article 399 of the Code of Civil Procedure execution of judgments against state bodies was only possible through submission of the writ of execution directly to the state organ concerned. Enforcement proceedings were not provided for. An attachment of the defendant's bank account was not possible.

24. The applicant was also informed that the refusal to execute a final judgment could be a punishable criminal offence.

25. On an unspecified date the applicant complained to the Ministry of Labour and Social Care, which invited the mayor of the Chirpan municipality to comment.

26. On 15 October 1996 the mayor wrote the following to the Ministry and to the applicant:

> "Having studied the [applicant's] request and having discussed the matter with the management of the municipal Social Care Centre, we reached the conclusion that the problem is under the jurisdiction of the judicial authorities. The municipal Social Care Centre considers that the civil proceedings had been handled wrongly: the [defendant]

had been Home Patronage, which has no legal personality and does not have its own bank account. For this reason, the Social Care Centre sees no legal grounds, for purposes of the financial authorities, to effect the payment. Apparently the matter should be examined additionally by the courts. The municipal administration cannot interfere in this matter."

27. In 1996 the applicant submitted a complaint to the prosecution authorities requesting the punishment of those responsible for the failure to enforce the judicial award.

28. In April or May 1997 she complained of the inactivity of the prosecution authorities.

29. On 19 May 1998 a prosecutor requested information from the Social Care Centre. On 29 May 1998 the Centre replied to the prosecutor, with a copy to the mayor of Chirpan. It stated that Home Patronage was not a separate legal person but formed a part of the Social Care Centre which, in turn, was under the administration and budgetary control of the municipality. Therefore, the applicant could obtain payment by submitting her documents to the municipality of Chirpan. The date on which that information was transmitted to the applicant is unclear.

30. On 6 April 1999 the applicant was heard by a prosecutor.

31. On 17 March 2000 the prosecutor terminated the inquiry noting that the applicant had been informed that she had to submit her writ of execution and a copy of the judgment to the municipality of Chirpan.

32. During the relevant period inflation in Bulgaria was running high and the national currency was depreciating. In particular, on 31 March 1995, the date on which the District Court's judgment was delivered, BGL 66 were necessary to buy one United States dollar (USD), in May 1996, at the time of the applicant's attempts to obtain payment, that figure was BGL 92, on 15 October 1996, the date on which the mayor refused to execute the judgment, it was BGL 216 and in May 1998 the exchange rate was BGL 1,782 for USD 1.

33. As of 1 July 1999, BGL 1,000 became 1 new Bulgarian lev (BGN). On 17 March 2000, the date on which the applicant was invited to renew her request for payment before the Chirpan municipality, USD 1 was exchangeable for BGN 1.62 (i.e., for BGL 1,620).

34. For the period May 1996 – March 2000 the statutory interest rate in Bulgaria varied significantly, reaching during a period of several months in the end of 1996 and the beginning of 1997 an average of approximately 200% per annum. That was however insufficient to compensate for the loss of value of the Bulgarian lev during that period.

35. Following the admissibility decision in the present case, on 21 February 2003 the municipality of Chirpan paid BGN 68.69 into a bank account opened by them in the applicant's name. The amount included BGN 15 in principal, BGN 49.19 in interest for the period 20 July 1993 –

20 February 2003 and BGN 4.50 in costs. The applicant was informed by letter.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Enforcement against state institutions under the Code of Civil Procedure

36. In accordance with paragraph 2 of Article 399, a person who has an enforceable pecuniary claim against the State or a state body shall receive payment out of funds allocated for that purpose under the institution's budget.

37. The writ of execution shall be submitted to the financial department of the institution. If there are no funds available under the budget of the state body concerned, the higher administrative organ should undertake the necessary steps to ensure that funds become available under the budget for the following year.

38. Enforcement proceedings and judicial review of the execution of a judgment are not possible where the debtor is a state institution. Until December 1997 paragraph 1 of Article 399 of the Code of Civil Procedure expressly prohibited enforcement proceedings against state institution. Although that provision was repealed in December 1997, the legal regime remained unchanged, as paragraph 2 of Article 399 was not amended.

B. Other relevant law

39. According to Articles 246 and 248 of the Code of Civil Procedure, a writ of execution is issued in a single copy which must be produced for execution. Where the original has been lost, a *duplicata* may be issued in special proceedings which require summoning the debtor at an oral hearing.

40. According to section 66 of the Obligations and Contracts Act, a creditor is entitled to refuse partial payment.

41. According to section 97 of the Obligations and Contracts Act, if the creditor fails to undertake the measures necessary to receive payment, the debtor may discharge a pecuniary debt by depositing the money in a bank account.

THE LAW

42. The applicant complained that she was unable to obtain payment of the sums owed to her by a State body under a final judicial decision and that

Bulgarian law did not provide an efficient mechanism for the collection of debts owed by state institutions.

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

43. Article 6 § 1 provides, as relevant:

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

A. The parties' submissions

1. The applicant

44. The applicant contended that the events complained of had been the result solely of the unwillingness of Home Patronage and the Social Care Centre to pay. It was not true, as stated by the Government, that the partial payment offer had been motivated by budgetary constraints. In reality, there had been a clear attempt on the part of the municipal authorities to avoid full payment. That was illustrated by the correspondence of May and June 1996.

45. Moreover, in flagrant disregard of the rule of law, in his letter of 15 October 1996 the mayor had expressly stated his refusal to enforce a final and binding judicial decision. The applicant's ensuing attempts to secure compliance by seeking criminal proceedings against the officials obstructing the execution of the judgment had remained fruitless.

46. In the light of these facts, it was obvious that the applicant's failure to produce the original copy of the writ of execution had been immaterial. She had submitted written claims asking to be paid in compliance with the final judgment and had been faced with obstruction. The production of the writ was a mere formality: it was clear that in law and in practice the municipality could have paid without it or requested its production.

47. The applicant also submitted that the municipality could have discharged their debt by depositing the money in a bank account, as provided for under the Obligations and Contracts Act.

48. Further, the applicant considered that Article 399 of the Code of Civil Procedure was a remnant from the totalitarian principle of supremacy of state interests over individual rights. It was contrary to the new Bulgarian Constitution and the Convention, as it violated the principle of equality of the parties to civil proceedings and left the execution of final judgments against state institutions to the debtor's discretion. In the applicant's view, there has therefore been a violation of the State's positive obligations to enact such procedure for the collection of debts owed by state institutions so as to ensure respect for the individual's rights of enforcement of final judgments and peaceful enjoyment of possessions.

49. Finally, the applicant contended that the payment made on 21 February 2003 was insufficient as the interest accrued had been miscalculated and in view of the fact that the amount paid did not include a compensation for the lost value of her claim.

2. The Government

50. The Government stated that the applicant alone was responsible for the events she complained of. In particular, she had been invited at least three times to receive a partial payment but had refused. Had she accepted, she would have diminished the damage caused by the inflation. In the Government's view, Bulgarian law did not oblige state institutions to pay immediately and in one instalment. That was the consequence of the specific role of state institutions. In particular, health care, education and welfare aid depended on municipalities' budgets. To safeguard their proper operation, the law provided that state institutions lacking the funds necessary to pay a debt immediately should secure resources through the following year's budget. Thus, the applicant had been offered an amount corresponding to the budgetary availability. She would not have forfeited her right to receive the remainder by accepting partial payment.

51. Further, the applicant had not submitted the original copy of her writ of execution to the Social Care Centre or the financial department of the municipality of Chirpan. Had she done so, she would have received payment. The applicable procedure was repeatedly explained to her but she did not make use of it. As of March 2001 the applicant had still not presented her writ of execution and the municipal employees were even unaware of her claims. By contrast, when presented with a writ of execution in another case in January 2000, Chirpan municipality had paid without delay.

52. The Government also stated that the provisions of the Obligations and Contracts Act, according to which a debtor may discharge a debt without the creditor's consent by depositing the money in a bank account, were inapplicable: the pertinent legal regime was that under Article 399 of the Code of Civil Procedure.

53. The Government further stressed that in February 2003 the applicant had received full payment.

B. The Court's assessment

54. The Court reiterates that the right to access to a court, entrenched in Article 6 § 1 of the Convention, would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6. The rule of law, one of the fundamental principles of

a democratic society, is inherent in all Articles of the Convention and entails a duty on the part of the State and any public authority to comply with judicial orders or decisions against it (see the Hornsby v. Greece, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, pp. 510-11, §§ 40-41, *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II and, *mutatis mutandis*, *Hasan and Chaus v. Bulgaria* [GC], no. 30985/96, § 87, ECHR 2000-XI).

55. Insofar as the Government may be understood as arguing that the applicant has ceased to be a victim of the alleged violations of the Convention by virtue of the fact that BGN 68.69 were paid to her in February 2003, the Court finds that the applicant may still claim to be a victim within the meaning of Article 34 of the Convention since the payment intervened only after the present application had been declared admissible, did not involve any acknowledgment of the violations alleged and did not afford the applicant adequate redress for the delay in payment (see *Burdov v. Russia*, no. 59498/00, §§ 29-32, ECHR 2001-VI).

56. The parties are in dispute as to whether the applicant's behaviour or the conduct of the municipal authorities (the debtor) were the principal cause for the delay in the execution of the Chirpan District Court's judgment of 31 March 1995.

57. The Court notes that the date on which the judgment became final and enforceable and the date on which the applicant first sought payment have not been established. It is undisputed, however, that on 9 May 1996 the applicant submitted a written request for payment and that at that time the District Court's judgment was final and enforceable (see paragraphs 12-18 above). The Court will therefore examine the events after that date.

58. It observes that in May and June 1996 the Social Care Centre, the debtor, stated that they would only pay the applicant BGL 15,000 whereas at that time the amount due, including costs and interest, had been approximately BGL 40,000. The Centre provided no reason for not paying the whole amount due and gave no indication of a possible date for the payment of the remainder. It did not invoke a temporary budgetary constraint (see paragraphs 14-21 above). In any event, it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt (see *Burdov v. Russia,* cited above, § 35).

59. Moreover, in October 1996, in reply to the applicant's complaints, the mayor made an express refusal to pay, stating that the judicial proceedings had been "wrongly handled". The fact that the applicant had not enclosed a writ of execution to her payment request was never cited by the municipal authorities as grounds for their failure to pay. There is no reason to believe that she would have refused to submit it had the municipality offered full payment (see paragraphs 14-30 above). The applicant was, furthermore, under no obligation to accept a partial payment.

Since Bulgarian law does not provide for judicial or other institutionalised supervision on the execution of judgments against State institutions, the applicant could do nothing more than to submit complaints to the prosecution authorities and to the relevant Ministry (see paragraphs 23-25, 27-30 and 36-38 above).

60. The Court thus finds that the fact that no payment was effected as due in 1996 was imputable to the authorities. The problems encountered by the applicant were exacerbated by the fact that Bulgarian law does not provide for any clearly regulated complaints procedure before an independent body with power to issue binding orders in cases of failure of State institutions to execute judgments against them.

61. No change in the relevant circumstances occurred until March 2000. As a result, for years the applicant was deprived of the sums owed to her under a final and enforceable judicial decision. By failing to take the necessary measures to comply with the final judicial decision in the present case for the period May 1996 – March 2000 the Bulgarian authorities deprived the provision of Article 6 § 1 of all useful effect.

62. There has accordingly been a violation of Article 6 § 1 of the Convention in this respect.

63. As to the delay after 17 March 2000, the date on which the applicant's complaints resulted in a formal decision by a prosecutor who stated that the applicant would receive payment upon submission of a request to the Chirpan municipality, the Court observes that the applicant has not shown valid reasons for failing to act upon this clear invitation to renew her payment request before the competent institution. The responsibility of the authorities cannot be engaged in respect of the period after March 2000.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

64. Article 1 of Protocol No. 1 provides, as relevant:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

65. In accordance with the Court's established case-law, the applicant's enforceable claim under the final judgment of 31 March 1995 constituted a

"possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

66. The impossibility for the applicant to obtain the execution of that judgment, until 17 March 2000, constituted an interference with her right to peaceful enjoyment of her possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1.

67. The Government have not advanced any justification for this interference

68. It follows that there has also been a violation of Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. Pecuniary damage

70. The applicant stated that at the moment of her accident, on 3 December 1992, the amounts she was eventually awarded, BGL 19,500, were the equivalent of approximately USD 780. She further claimed that interest should be added to that amount and, without clarifying her method of calculating it, sought EUR 2,000 in respect of pecuniary damage.

71. The Government stated that in February 2003 the applicant had received full payment, including all interest. The interest compensated her for the delay in payment. While it was true that the inflation and the depreciation of the national currency had diminished the real value of the amount paid to the applicant, the Government considered that they should not be held responsible for the consequences of those economic phenomena. In any event, if the applicant considered that she had suffered pecuniary damage exceeding the amount received, it was open to her to bring an action under Section 86 of the Obligations and Contracts Act.

72. The Court reiterates that Article 41 of the Convention does not require applicants to exhaust domestic remedies a second time in order to obtain just satisfaction if they have already done so in vain in respect of their substantive complaints (see *Anguelova v. Bulgaria*, no. 38361/97, § 172, ECHR 2002-IV).

73. The Court found that the authorities were responsible for the fact that between May 1996 and March 2000 the applicant could not obtain the execution of the Chirpan District Court's judgment which awarded to her BGL 15,000 in principal and BGL 4,500 costs, plus interest for the period from 20 July 1993 until the date of payment (see paragraphs 12, 22 and 60-62 above). By the time the applicant was invited to renew her payment request on 17 March 2000, the real value of the amount she was entitled to, including statutory interest, had diminished by a factor of fifteen or more, owing to the inflation and the depreciation of the Bulgarian lev at the time (see paragraphs 32-35 above). The applicant thus suffered a pecuniary loss which would have been avoided had the authorities acted in compliance with their obligations under Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention to comply with the Chirpan District Court's judgment (see, as a recent authority, *Metaxas v. Greece*, no. 8415/02, § 36, 27 May 2004).

74. Taking into account the available information about the loss of value of the Bulgarian currency at the relevant time, the Court, deciding on an equitable basis, awards the applicant EUR 500 in respect of pecuniary damage.

2. Non-pecuniary damage

75. The applicant also claimed EUR 6,000 in non-pecuniary damages stating that throughout the relevant period she had suffered the medical consequences of her accident and had needed medicines. She had also endured frustration and humiliation caused by the attitude of the authorities who refused to enforce the final judgment in her case.

76. The Government stated that the applicant was not subjected to any humiliation and that she had repeatedly been invited to receive payment. In their view the finding of a violation of the Convention constituted sufficient just satisfaction.

77. The Court observes that there is no causal link between the medical consequences of the accident the applicant had suffered and the violations of the Convention found in the present case. As to the frustration that the applicant must have endured as a result of the violations of her Convention rights, the Court, deciding on an equitable basis and having regard to the particular circumstances of the present case, awards EUR 500 in respect of non-pecuniary damage.

B. Costs and expenses

78. The applicant claimed EUR 3,065 for 48 hours and 30 minutes of legal work by her lawyer on the proceedings before the Court at hourly rates varying between EUR 50 and EUR 70. The applicant submitted a fees agreement between her and her lawyer and a time-sheet. She also claimed EUR 297 for translation, telephone, photocopying and overhead expenses.

She submitted postal receipts and a receipt for BGN 240 (the equivalent of approximately EUR 120) paid for translation.

79. The Government replied that the claims were excessive in view of the low level of the minimum monthly wages in Bulgaria. Even if some law firms in Bulgaria charged at hourly rates comparable to those claimed in the present case, that practice only concerned corporate clients. The applicant's claim was even "immoral".

80. Deciding on an equitable basis and taking into account EUR 630 received in legal aid from the Council of Europe, the Court awards EUR 1,800 in respect of costs and expenses.

C. Default interest

81. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 1,000 (one thousand euros) in respect of pecuniary and non-pecuniary damage;

(ii) EUR 1,800 (one thousand and eight hundred euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 September 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President