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

THIRD SECTION

CASE OF NESHEV v. BULGARIA

(Application no. 40897/98)

JUDGMENT

STRASBOURG

28 October 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 Neshev v. Bulgaria,

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

Mr G. RESS, *President*,
Mr I. CABRAL BARRETO,
Mr L. CAFLISCH,
Mr B. ZUPANČIČ,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mrs S. BOTOUCHAROVA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 13 March 2003 and 7 October 2004,

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

PROCEDURE

1. The case originated in an application (no. 40897/98) 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, Mr Todor Nenchev Neshev ("the applicant"), on 3 December 1997.

2. The applicant was represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their agents, Ms V. Djidjeva and Ms M. Kotzeva, of the Ministry of Justice.

3. The applicant alleged, in particular, that he had no access to a court in the determination of his rights in the context of a labour dispute.

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 Third Section of the Court (Rule52 § 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 13 March 2003, the Court declared the application partly admissible.

7. On 21 May 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 was born in 1953 and lives in Plovdiv. He used to work as a shunter at the Bulgarian State Railways. On 15 August 1995 he was dismissed from his work for having breached disciplinary regulations.

9. On 5 February 1996 the applicant filed with the Plovdiv District Court an action for wrongful dismissal against his former employer.

10. On 12 March 1996 the District Court heard the applicant and his lawyer and rejected the case, ruling that the applicant's dismissal was not amenable to judicial review. It based its decision on section 9(3) of the Decree No. 9 of 6 January 1981 and the Supreme Court's practice, according to which employees of the State Railways dismissed for breach of disciplinary regulations could only appeal to a higher administrative body, not to a court.

11. On 18 March 1996 the applicant appealed to the Plovdiv Regional Court against the District Court's decision. He argued that Decree No. 9 was contrary to Article 6 of the Convention. He also relied on an amendment to the Labour Code of 1993, stating that it vested with the courts power to examine all appeals for wrongful dismissal, despite the provisions of Decree No. 9.

12. By decision bearing the date 8 April 1996 the Regional Court, sitting in private, dismissed the applicant's appeal, holding that in accordance with Decree No. 9 a judicial appeal against the applicant's dismissal was not possible.

13. The Regional Court's decision was not pronounced publicly and was not served.

14. On 4 June 1996 the case file was transmitted by the judge-rapporteur to the Regional Court's clerical staff which made an entry in the court's register.

15. On 5 June 1996 the case file was transmitted to the District Court and an entry was made in its register.

16. On 13 June 1996 the applicant submitted a petition for review (преглед по реда на надзора) to the Supreme Administrative Court.

17. The parties were summoned for a hearing but none of them appeared.

18. On 18 July 1997, sitting in private, the Supreme Administrative Court rejected the petition for review as time barred. It held that the Regional Court's decision had entered into force on 8 April 1996 and that the two months' time-limit for submission of a petition for review had expired on 8 June 1996 whereas the petition had been submitted on 13 June 1996.

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Legal regime of State Railways' employees and appeals against dismissal

19. At the relevant time, in accordance with Decree No. 9 of 6 January 1981, employees of the State Railways were subject to a special legal regime. They had ranks, wore uniforms and were subject to strict hierarchy and discipline, under the control of the Ministry of Transport. Decree No. 9 set out the special rules governing service in the State Railways. The Labour Code had subsidiary application.

20. Section 9 of the Decree, as in force at the relevant time and until February 1997, provided, *inter alia*, that disputes about wrongful dismissal of employees of the State Railways were amenable to review by the higher administrative authority only. As a result, until August 1996 the courts' practice was to reject actions for wrongful dismissal of railways' employees.

21. In a judgment of 19 August 1996 the Supreme Administrative Court, departing from earlier practice, held that the prohibition of judicial review under Decree No. 9 was to be considered abandoned since 1 March 1993, the date on which an amendment to the Labour Code had entered into force (опр. no. 641 от 19.8.1996 г., Бюлетин на ВС, кн. 10-1996 г., стр. 17).

22. The relevant part of section 9 of Decree No. 9 was eventually repealed by the Constitutional Court by decision of 18 February 1997 as unconstitutional and contrary to Article 6 of the Convention. The Constitutional Court held that dismissal from work could not be excluded from the jurisdiction of the courts, regard being had to the fact that the right to work is one of the fundamental constitutional rights (реш. no. 5 от 18.2.1997 по конст. дело no. 25/96 г. на КС на РБ, Държавен вестник, бр. 20/97).

23. In November 2000 the remainder of Decree No. 9 was repealed and the special legal regime of State Railways employees abandoned.

2. Service of judgments and decisions at the relevant time

24. Under the Code of Civil Procedure as in force at the relevant time, service was required only in respect of judgments and certain types of procedural decisions issued by a first level of jurisdiction.

25. Judgments or decisions delivered by a court acting as a second level jurisdiction were not served despite the fact that most of them were amenable to review (преглед по реда на надзора), within particular time limits, before the Supreme Court (which was later reconstituted into the Supreme Administrative Court and the Supreme Court of Cassation).

26. As a result, whenever second instance cases were decided in private (which was the rule in appeals against procedural decisions), the parties

could only learn whether or not their case had been decided by visiting the respective court and checking its register periodically.

27. Article 226 of the Code of Civil Procedure, as in force at the relevant time, provided that a petition for review could be submitted within two months from the impugned decision's entry into force. At that time judgments and decisions issued by a second level of jurisdiction entered into force on the date on which they were made (opr. 3022-95-III).

28. According to the applicant, the courts nevertheless would normally count the two-month time-limit from the date on which the second instance judgment or decision was entered in the respective register. No relevant case-law has been cited by the parties.

THE LAW

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

29. The applicant complained that he did not have access to a court to challenge the lawfulness of his dismissal. He relied on Article 6 § 1 of the Convention which provides, as relevant:

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

A. Applicability of Article 6 § 1

30. The applicant made extensive submissions arguing that Article 6 was applicable despite the particular legal rules governing employment in the State Railways at the relevant time. The Government did not comment.

31. Insofar as the applicant worked for a public body, it is necessary to determine whether his dismissal concerned his "civil" rights within the meaning of Article 6 § 1.

32. On the basis of the available information, the Court does not consider that the applicant's duties and responsibilities as a shunter were akin to those that "typify the specific activities of the public service ... as the depository of public authority responsible for protecting the general interests of the State or other public authorities" (see *Pellegrin v. France* [GC], no. 28541/95, ECHR 1999-VIII). The dispute about his dismissal concerned, therefore, the applicant's 'civil' rights and obligations within the meaning of Article 6 § 1.

33. It follows that Article 6 § 1 was applicable.

B. Compliance with Article 6 § 1

34. The applicant considered that the courts should have suspended the proceedings in his case and should have referred to the Constitutional Court the issue of constitutionality of Decree No. 9, the law which barred his access to a court.

35. The Government stated that the law at the time did not provide for judicial review of disputes concerning employment in the State Railways and that the Constitutional Court's judgment of 18 February 1997 did not have retroactive effect. Therefore, the courts in the applicant's case had applied the relevant domestic law correctly. The Government stressed that had the applicant submitted a timely petition for review, he would have obtained a favourable outcome, as in the meantime the relevant part of Decree No. 9 had been repealed.

36. The Court notes that at the time when the District and Regional Courts rejected the applicant's action and at least until August 1996 the relevant law, section 9 of Decree No. 9 – as interpreted by the domestic courts – , barred any access to a court in respect of dismissals from employment in the State Railways (see paragraphs 9-15 and 19-22 above).

37. In February 1997, at a time when the review proceedings before the Supreme Administrative Court in the applicant's case were pending, the Constitutional Court declared section 9 of Decree No. 9 unconstitutional and contrary to the Convention (see paragraphs 16-18 and 22 above). Therefore, as the Government rightly pointed out, had the Supreme Administrative Court accepted the applicant's petition for review as timely, it would have in all likelihood quashed the procedural decisions of the lower courts and would have directed them to review the lawfulness of the applicant's dismissal, as required by domestic law as in force after February 1997. In these circumstances, the Court must establish whether the applicant was responsible for the fact that his petition for review was rejected as being out of time.

38. In the admissibility decision of 13 March 2003 in the present case the Court already found that the Supreme Administrative Court's reasoning when rejecting the applicant's petition for review as time barred ran contrary to the principle of legal certainty. The relevant part of the Court's decision reads:

> "The Court observes that the Regional Court's decision of 8 April 1996 was taken in private and was not served. The applicant could not possibly learn about it before 4 June 1996, the date on which the decision was entered on the Regional Court's register. Moreover, as the applicant was never made aware of any timetable for processing of his case by the Regional Court, he could only learn of the entry made in the register by taking the initiative to visit the court and consult the register periodically. Obviously, he could not be reasonably expected to do that every day.

> Despite the above undisputed facts, and without verifying the date on which the Regional Court's decision had been registered and the date on which the applicant had consulted the register, the Supreme Administrative Court rejected the petition for review as having been submitted more than two months after 8 April 1996, the date of the Regional Court's decision taken in private.
>
> The Court finds that the above approach, which consisted in accepting that a time-limit for the submission of an appeal against a judicial decision ran during a period when the party concerned had no reasonable possibility to learn that such a decision existed, was contrary to the principle of legal certainty. The Court reiterates that although time-limits are in principle legitimate procedural limitations on access to a court, their interpretation in disregard of relevant practical circumstances may result in violations of the Convention (see, *mutatis mutandis*, *Shishkov v. Bulgaria*, no. 38822/97, § 84, 9 January 2003, and *Miragall Escolano and Others v. Spain*, no. 38366/97, §§ 33-39, ECHR 2000-I).
>
> The applicant's petition for review was submitted on 13 June 1996, a few days after 4 June 1996, the date on which it became possible for him to learn about the decision in his case by consulting the court's register.
>
> It follows that the applicant's attempt to employ the remedy available at the relevant time, a petition for review to the Supreme Administrative Court, was valid ... "

39. The Court thus finds that the applicant was not responsible for a procedural error.

40. It follows that he was denied access to a court by virtue of a domestic legal provision, section 9 of Decree No. 9, and – after it was repealed by the Constitutional Court in February 1997 – owing to the defective approach applied by the Supreme Administrative Court in its decision of 18 July 1997.

41. There has been, therefore, a violation of Article 6 § 1 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage stating that he had been denied justice and had endured serious difficulties as a result of the loss of his job.

44. The Government stated that the claim was excessive and referred to Bulgarian cases in which the Court had awarded lower amounts.

45. The Court cannot speculate whether the applicant's dismissal would have been quashed if his case had been heard by a court. Nonetheless, the applicant must have suffered non-pecuniary damage as a result of the violation of his right to a court. Deciding on an equitable basis, the Court awards EUR 1,000 in respect of non-pecuniary damage.

B. Costs and expenses

46. The applicant claimed EUR 2,615 for 53 hours and thirty minutes of legal work, including fifteen hours of work on the domestic proceedings, twelve of which at hourly the rate of EUR 50 and three at the hourly rate of EUR 30. The remaining hours claimed in respect of work on the proceedings before the Court were charged at the rate of EUR 50. The applicant submitted a fees agreement between him and his lawyer and a time sheet.

47. The applicant also claimed EUR 213 for the translation of 28 pages of text, photocopying, postal and overhead expenses. He submitted copies of postal receipts.

48. The applicant requested that the amounts awarded by the Court under this head should be paid directly to his legal representative, Mr M. Ekimdjiev.

49. The Government stated, *inter alia*, that the claim regarding work on the domestic proceedings should be dismissed as unrelated to the present case.

50. The Court considers that the costs incurred by the applicant in an attempt to gain access to a domestic court were necessary and relevant to the complaints under the Convention. However, a reduction must be applied on account of the fact that some of the complaints submitted to the Court were declared inadmissible. The Court also notes that the claim for translation expenses is not supported by relevant documents.

51. Deciding on an equitable basis, the Court awards EUR 2,000 in respect of costs and expenses.

C. Default interest

52. 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*
   (a) that the respondent State is to pay, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 1,000 (one thousand euros) in respect of non-pecuniary damage to be paid to the applicant himself;
      (ii) EUR 2,000 (two thousand euros) in respect of costs and expenses to be paid directly to the applicant's legal representative, Mr M. Ekimdjiev;
      (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;

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

Done in English, and notified in writing on 28 October 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER Registrar	Georg RESS President