FIFTH SECTION

CASE OF BABICHKIN v. BULGARIA

(Application no. 56793/00)

JUDGMENT

STRASBOURG

10 August 2006

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 Babichkin v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2006,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 56793/00) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Dimitar Angelov Babichkin ("the applicant"), on 19 January 2000.

2. The applicant was represented by Ms S. Stefanova and Mr M. Ekimdjiev, lawyers practising in Plovdiv.

3. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadjova, of the Ministry of Justice.

4. On 26 November 2004 the Court decided to communicate the application to the Government. Applying Article 29 § 3 of the Convention, it decided to rule on the admissibility and merits of the application at the same time.

5. On 1 April 2006 this case was assigned to the newly constituted Fifth Section (Rule 25 § 5 and Rule 52 § 1).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1939 and lives in Asenovgrad.

7. On 29 May 1991 he entered into an employment agreement with a local company (the "company") whereby he undertook to work for it abroad. Several months later, while working for the company in Germany,

the applicant fell seriously ill, underwent an operation and was on sick leave for about two months. At the end of his sick leave on 18 October 1991, the applicant found that his employment agreement had been unilaterally terminated by the company. He returned to Bulgaria soon thereafter.

8. On 19 May 1992 the applicant initiated an action against the company. He sought damages in the amount of 13,170 German marks (DEM), or their equivalent of 184,389 Bulgarian levs (BGL), on account of the company's failure to pay out sick leave entitlements, back pay for overtime work and a payment for an insurance policy.

9. The Plovdiv Regional Court conducted ten hearings between 2 September 1992 and 23 January 1995, scheduled two to five months apart. During this time it obtained two experts' reports and questioned witnesses. Of the hearings conducted, one was adjourned from 5 March to 5 May 1993 due to the absence of the applicant, another was postponed from 12 May to 14 September 1994 at the request of the defendant and a third, was adjourned from 14 September to 28 November 1994 because the defendant was hindering an expert from completing his report.

10. In a judgment of 2 March 1995 the Plovdiv Regional Court found partly in favour of the applicant. It awarded him BGL 1,032 for sick leave entitlements and dismissed the remainder of his claims. On 22 March 1995 the applicant appealed against the judgment.

11. A hearing was held before the Supreme Court on 28 February 1996.

12. In a judgment of 16 July 1996 the Supreme Court declared the judgment of the Plovdiv Regional Court null and void and remitted the case to the lower court. It established that the lower court had been sitting in an unlawful composition of three judges rather than of one judge and two jurors.

13. At the retrial, the Plovdiv Regional Court conducted nine hearings between 28 October 1996 and 12 June 1998, scheduled one to four months apart. During this time it obtained an expert's report and questioned witnesses. Of the hearings conducted, one was adjourned from 29 April to 2 May 1997 because the applicant could not be summoned at his address. In addition, between 3 September 1997 and 16 April 1998 three consecutive hearings were postponed because the applicant or his lawyer were ill and at the request of the defendant in order to acquaint himself with the expert's report.

14. In a judgment of 22 December 1998 the Plovdiv Regional Court again found partly in favour of the applicant. It awarded him BGL 24,100 for sick leave entitlements and dismissed the remainder of his claims. On 25 February 1999 the applicant appealed against the judgment.

15. The Plovdiv Court of Appeals conducted four hearings between 10 September 1999 and 17 April 2000, scheduled one to four months apart. One of the hearings was adjourned from 10 September to 19 November 1999 because the applicant was ill.

16. In a judgment of 3 July 2000 the Plovdiv Court of Appeals quashed part of the judgment of the lower court in respect of the amount awarded to the applicant for sick leave entitlements in Bulgarian levs and rendered a judgment in the case whereby it re-calculated the award in German marks, specifying it to be DEM 1,679 plus interest as from 22 May 1992. It upheld the remainder of the judgment of the Plovdiv Regional Court in respect of the dismissal of the applicant's other claims. On 13 September 2000 the applicant appealed against the judgment.

17. A hearing was held before the Supreme Court of Cassation on 5 June 2001.

18. In a judgment of 10 August 2001 the Supreme Court of Cassation quashed part of the judgment of 3 July 2000 of the Plovdiv Court of Appeals, in which the latter had upheld the dismissal of the applicant's claims for back pay and overtime work, and remitted that part of the case to the lower court. It upheld the remainder of the judgment of the Plovdiv Court of Appeals in respect of the amounts awarded for sick leave entitlements.

19. The Plovdiv Court of Appeals conducted three hearings between 24 October 2001 and 23 January 2002, scheduled one to two months apart, during which time an expert's opinion was obtained.

20. In a judgment of 22 February 2002 the Plovdiv Court of Appeals quashed the remaining part of the judgment of 22 December 1998 of the Plovdiv Regional Court and rendered a judgment in the case in which it ordered the company to pay the applicant DEM 2,220 for back pay and overtime work plus interest as from 22 May 1992.

21. On 25 March 2002 the applicant obtained a writ of execution against the company for the amounts awarded. It is unclear whether and if the applicant obtained execution of the same.

22. On 3 April 2002 the company appealed against the judgment of the Plovdiv Court of Appeals.

23. A hearing was held before the Supreme Court of Cassation on 25 February 2004.

24. In a final judgment of 5 March 2004 the Supreme Court of Cassation upheld the judgment of 22 February 2002 of the Plovdiv Court of Appeals.

THE LAW

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

25. The applicant complained that the length of the civil proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 § 1 of the Convention, which reads as follows:

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

26. The Government contested that argument. They claimed that the parties to the proceedings had contributed to their overall length and that the authorities had shown the required diligence in processing the case. In addition, they contended that what was at stake for the applicant was not significant.

The applicant disagreed with the Government's arguments.

A. Period to be taken into consideration

27. The parties agreed that the period to be taken into consideration did not begin to run on 19 May 1992 when the applicant initiated the action against the company (see paragraph 8 above), but only on 7 September 1992 when the Convention entered into force in respect of Bulgaria. However, in order to determine whether the time which elapsed following this date was reasonable, it is necessary to take account of the stage which the proceedings had reached at that point (see *Proszak v. Poland*, judgment of 16 December 1997, *Reports of Judgments and Decisions* 1997-VIII, p. 2772, § 31). The Court notes that on 7 September 1992 the proceedings had been pending before the court of first instance for only three and a half months and that only one hearing had been conducted.

28. As regards the end of the period under consideration, the Government contended that the proceedings should be considered to have ended on 26 March 2002 when the applicant obtained a writ of execution for the amounts awarded. The applicant disagreed with the Government's argument.

The Court notes that following the issuance of the writ of execution the defendant appealed against the judgment of the Plovdiv Court of Appeals and the proceedings continued before the Supreme Court of Cassation (see paragraphs 22-24 above). Accordingly, the judgment of the Plovdiv Court of Appeals did not enter into force and did not definitively determine the amount of compensation due, thereby bringing the domestic proceedings to an end (see *Pailot v. France*, judgment of 22 April 1998, *Reports* 1998-II, p. 802, § 59). The Court therefore finds that the period under consideration

ended on 5 March 2004, when the Plovdiv Court of Appeals's judgment became final (see paragraph 24 above).

29. The overall length of the proceedings was thus eleven years, nine months and nineteen days, of which eleven years, five months and thirty days fall within the Court's competence *ratione temporis*, during which time the case was examined seven times at three levels of jurisdiction.

B. Admissibility

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

31. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In addition, only delays attributable to the State may justify a finding of a failure to comply with the "reasonable time" requirement (see *H. v. France*, judgment of 24 October 1989, Series A no. 162-A, pp. 21-22, § 55).

32. The Court considers that the case was moderately complex as it involved the completion of experts' reports pertaining to the determination of the amounts claimed by the applicant.

33. In respect of the conduct of the applicant and the defendant, the Court finds that there were certain delays directly attributable to them as a result of failure to appear at some of the hearings, unreasonable requests for adjournments and illnesses. Moreover, the defendant hindered an expert from completing his report to the court by obstructing or denying him access to the accounting documents in its possession (see paragraph 9 above). In conclusion, having regard to the facts of the case, the applicant and the defendant were directly responsible for eight months and seventeen days of delay during the first hearing of the case before the Plovdiv Regional Court (see paragraph 9 above), seven months and fifteen days at the time of the retrial before the same court (see paragraph 13 above) and two months and nine days before the Plovdiv Court of Appeals (see paragraph 15 above). Thus, the total period of delay not attributable to the State was one year, six months and eleven days.

34. As to the conduct of the authorities, the Court notes at the outset that the domestic courts conducted hearings at regular intervals of one to five

months apart (see paragraphs 9, 13, 15 and 19 above). The transfer of the case between the various courts did not result in any significant delays with one notable exception: further to the defendant's appeal of 3 April 2002 the Supreme Court of Cassation conducted a hearing one year, ten months and twenty four days after it had been lodged (see paragraphs 22-23 above).

The most significant delay in the proceedings, however, resulted from the judgment of the Plovdiv Regional Court having been declared null and void on 16 July 1996 due to a procedural violation by the said court (see paragraph 12 above). This resulted in a retrial and fully negated the proceedings up to that point, which had involved two levels of jurisdiction and had lasted almost four years and two months, of which eight months and seventeen days were attributable to the applicant and the defendant (see paragraphs 9 and 33 above).

Thus, considering the above period of inactivity before the Supreme Court of Cassation and the delay as a result of the retrial, the period of delay attributable to the authorities is five years, four months and five days.

35. Lastly, the Court reiterates that special diligence is necessary in employment disputes (see *Ruotolo v. Italy*, judgment of 27 February 1992, Series A no. 230-D, p. 39, § 17).

36. Considering the above, the Court is of the opinion that the "reasonable time" requirement of Article 6 § 1 of the Convention was breached in the present case on account of the civil proceedings initiated by the applicant having lasted eleven years, nine months and nineteen days, of which eleven years, five months and thirty days fall within the Court's competence *ratione temporis*, during which time the case was examined seven times at three levels of jurisdiction.

There has accordingly been a breach of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

37. The applicant also complained of the fact that in Bulgaria there was no court to which application could be made to complain of the excessive length of proceedings. He relied on Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

38. The Government did not expressly contest that argument.

39. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

40. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under

Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI).

41. The Court notes that in similar cases against Bulgaria it has found that a complaint based on the direct applicability of the Convention in Bulgarian law is not an effective remedy and neither is a "complaint about delays" under Article 217a of the Code of Civil Procedure. In addition, it does not appear that Bulgarian law provides any other means of redress whereby a litigant could obtain the speeding up of civil proceedings. Finally, as regards compensatory remedies, the Court has also not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings (see, for example, *Rachevi v. Bulgaria*, no. 47877/99, §§ 96-104, 23 September 2004). The Court sees no reason to reach a different conclusion in the present case.

42. Accordingly, there has been a violation of Article 13 of the Convention in that the applicant had no domestic remedy whereby he could enforce his right to a "hearing within a reasonable time" as guaranteed by Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant claimed 10,000 euros (EUR) as compensation for the non-pecuniary damage arising out of the excessive length of the proceedings. Furthermore, the applicant claimed that he had been frustrated on account of the lack of remedies against the unreasonable length of the proceedings.

45. The Government did not express an opinion on the matter.

46. The Court considers that it is reasonable to assume that the applicant may have suffered some distress and frustration on account of the unreasonable length of the proceedings and the lack of any remedies in this respect. Moreover, it notes that what was at stake for the applicant was significant (see paragraph 35 above). Accordingly, taking into account the circumstances of the case, and making its assessment on an equitable basis, the Court awards the applicant the sum of EUR 3,600 as compensation for

the non-pecuniary damage arising out of the excessive length of the proceedings.

B. Costs and expenses

47. The applicant claimed EUR 1,851 for 25.5 hours of legal work on the proceedings before the Court, at the hourly rate of EUR 70. In addition, he claimed EUR 117 for translation of documents, stationery and postal expenses of his lawyers. He submitted a legal fees agreement between him and his lawyers, a timesheet, an agreement for the translation expenses and postal receipts. The applicant requested that the costs and expenses incurred should be paid directly to his lawyers, Ms S. Stefanova and Mr M. Ekimdjiev.

48. The Government did not express an opinion on the matter.

49. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the instant case, the Court considers that the hourly rate of EUR 70 is excessive and that a reduction of the same is appropriate (see, *a contrario*, *Anguelova v. Bulgaria*, no. 38361/97, § 176 *in fine*, ECHR 2002-IV; *Nikolov v. Bulgaria*, no. 38884/97, § 111, 30 January 2003; *Toteva v. Bulgaria*, no. 42027/98, § 75, 19 May 2004 and *Rachevi*, cited above, § 111, where the Court found an hourly rate of EUR 50 reasonable). Having regard to all relevant factors, the Court considers it reasonable to award the sum of EUR 1,000 covering costs and expenses for the proceedings before the Court, plus any tax that may be chargeable on that amount.

C. Default interest

50. 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. *Declares* the application admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay to 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 on the date of settlement :

(i) EUR 3,600 (three thousand six hundred euros) in respect of non-pecuniary damage, payable to the applicant himself;

(ii) EUR 1,000 (one thousand euros) in respect of costs and expenses, payable in two equal instalments of EUR 500 (five hundred euros) into the bank accounts of the applicant's lawyers in Bulgaria, Ms S. Stefanova and 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;

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

Done in English, and notified in writing on 10 August 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President