FIFTH SECTION

CASE OF BONEVA v. BULGARIA

(Application no. 53820/00)

JUDGMENT

STRASBOURG

16 November 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 Boneva v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr K. JUNGWIERT,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 23 October 2006,

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

PROCEDURE

1. The case originated in an application (no. 53820/00) 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 Mrs Mariana Yordanova Boneva, a Bulgarian national who was born in 1967 and lives in Kirkovo ("the applicant"), on 12 October 1999.

2. The applicant was represented by Ms E. Nedeva, a lawyer practising in Plovdiv.

3. The Bulgarian Government ("the Government") were represented by their Agents, Ms M. Dimova and Ms M. Kotzeva, of the Ministry of Justice.

4. The applicant alleged that after she was arrested on 30 September 1999 she was not brought promptly before a judge or other officer authorised by law to exercise judicial power.

5. By a decision of 10 November 2005 the Court declared the application partly admissible.

6. The parties did not submit further written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. At the relevant time, the applicant was the head of the financial department of the Kirkovo municipality.

8. A preliminary investigation was opened against her on 28 September 1999 and she was arrested. After having fainted, she was released on the same day and was taken for treatment to a medical facility.

9. On 30 September 1999 the applicant was once again arrested, charged with misappropriation of funds and abuse of office and detained on remand upon a decision of an investigator, approved by the Kurdzhali Prosecutor's Office.

10. On 4 October 1999 the applicant filed an appeal against her detention.

11. On 8 October 1999 the applicant was brought before the Kurdzhali Regional Court in the context of the examination of her appeal. The domestic court, by majority, dismissed her appeal as it found that she had been charged with a serious offence which entailed mandatory detention.

12. In response to another appeal against her detention, on 21 October 1999 the Kurdzhali Regional Court released the applicant on bail as it found, *inter alia*, that her son had developed a serious medical condition as a result of his mother's detention.

13. On 28 February 2002 an indictment was entered against the applicant with the Momchilgrad District Court for misappropriation of funds and abuse of office.

14. In a judgment of 7 May 2004 of the Momchilgrad District Court acquitted the applicant of the charges against her. The judgment entered into force on 20 May 2004.

II. RELEVANT DOMESTIC LAW

15. At the relevant time and until the reform of the CCP of 1 January 2000 an arrested person was brought before an investigator who decided whether or not he or she should be remanded in custody. The investigator's decision was subject to approval by a prosecutor. The role of investigators and prosecutors under Bulgarian law has been summarised in paragraphs 25-29 of the Court's judgment in the case of *Nikolova v. Bulgaria* [GC] (no. 31195/96, §§ 45-53, ECHR 1999-II).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

16. The applicant complained that after the arrest on 30 September 1999 she was not brought promptly before a judge or other officer authorised by law to exercise judicial power.

Article 5 § 3 of the Convention provides, as relevant:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power..."

17. The Government concurred that the legislation in force prior to 1 January 2000 did not require detainees to be brought before a judge or other officer authorised by law to exercise judicial power. On the other hand, they argued that the applicant had available an appeals' procedure against her detention, which she made use of and, as a result, was presented before a judge on 8 October 1999. The Government considered, therefore, that the applicant had *de facto* been brought promptly before judge or other officer authorised by law to exercise judicial power, as required under Article 5 § 3 of the Convention.

18. In her response, the applicant referred to the Court's case-law, where it had found a violation as until 1 January 2000 pre-trial detention was ordered by a prosecutor or an investigator, who cannot be regarded as "judge[s]" or "other officer[s]" exercising judicial function (*Assenov and Others v. Bulgaria*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, *Nikolova*, cited above, *Shishkov v. Bulgaria*, no. 38822/97, ECHR 2003-I (extracts), *Yankov v. Bulgaria*, no. 39084/97, ECHR 2003-XII (extracts), and *Hamanov v. Bulgaria*, no. 44062/98, 8 April 2004).

19. The Court notes that this complaint is identical to those in previous cases against Bulgaria, where the Court found a violation as until 1 January 2000 pre-trial detention was ordered by a prosecutor or an investigator, who cannot be regarded as "judge[s]" or "other officer[s]" exercising judicial function (see *Assenov and Others*, cited above, §§ 142-50 and *Nikolova*, cited above, §§ 45-53).

20. In its observations the Government argued, *inter alia*, that the authorities complied with this provision, because the applicant was brought before a judge on 8 October 1999 when the Kurdzhali Regional Court heard her first appeal against her detention.

21. The Court reiterates, however, that judicial control under Article 5 § 3 of the Convention, must be prompt, a matter to be assessed in each case according to its special features (see *De Jong, Baljet and Van den Brink v. the Netherlands*, judgment of 22 May 1984, Series A no. 77, pp. 24-25, §§ 51-52). The scope for flexibility in interpreting and applying the notion of promptness is very limited (*Brogan and Others v. the United Kingdom*, judgment of 29 November 1988, Series A no. 145-B, p. 33, § 62, and *Aquilina v. Malta* [GC], no. 25642/94, § 48, ECHR 1999-III).

22. In addition to being prompt, the judicial control of the detention must be automatic and cannot be made to depend on a previous application by the detained person (see *De Jong, Baljet and Van den Brink*, cited above, p. 24, § 51, and *Aquilina*, cited above, § 48).

23. The Court notes that in the *Brogan and Others* case (see the above reference) it held that a justifiable detention in police custody which had lasted four days and six hours, without judicial control, breached the requirement of promptness. Applying that rationale to the present case, a detention which had lasted eight days, without judicial control, must also be considered to have breached the requirement of promptness under Article 5 § 3 of the Convention. Moreover, the applicant was presented before a judge on 8 October 1999 only as a result of the appeal she filed against her detention and not at the undertaking of the authorities.

24. In view of the above, the Court finds that Article 5 § 3 of the Convention has been breached on account of the authorities' failure to bring the applicant promptly before a judge or other officer authorised by law to exercise judicial power following her detention on 30 September 1999.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 2,000 euros (EUR) in respect of non-pecuniary damage. She claimed that she had felt anguish as a result of her detention and considered that if she had been brought promptly before a judge she could have been released sooner than on 21 October 1999.

27. The Government did not submit comments on the applicant's claims in respect of non-pecuniary damage.

28. The Court finds the applicant's argument unsubstantiated. Nevertheless, noting its finding of a violation of Article 5 § 3 of the Convention (see paragraph 24 above) and deciding on an equitable basis it awards EUR 500 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

29. The applicant claimed EUR 2,630 for 43 hours of legal work by her lawyer before the domestic courts at an hourly rate of EUR 50 or EUR 80 depending on the type of work involved. She also sought EUR 1,605 for 22.5 hours of legal work by her lawyer before the Court, at the hourly rate of EUR 50 or EUR 80 depending on the work. The applicant also claimed

EUR 129 for translation, phone, photocopying, postal and office expenses of her lawyer. The total amount thus sought was EUR 4,364. She submitted a legal fees agreement, a timesheet of completed legal work, invoices for translation costs and postal receipts. The applicant requested that the costs and expenses incurred should be paid directly to her lawyer, Ms E. Nedeva.

30. The Government did not submit comments on the applicant's claims for costs and expenses.

31. The Court reiterates that according to its 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, it considers that the hourly rates and the number of hours claimed, both for the work before the domestic courts and before the Court, seem excessive and that a reduction is necessary on that basis. Moreover, the majority of the applicant's complaints were declared inadmissible (see paragraph 5 above). Thus, having regard to all relevant factors the Court considers it reasonable to award the sum of EUR 750 in respect of costs and expenses, plus any tax that may be chargeable on that amount.

C. Default interest

32. 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 5 § 3 of the Convention on account of the authorities' failure to bring the applicant promptly before a judge or other officer authorised by law to exercise judicial power following her detention on 30 September 1999;

2. *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 500 (five hundred euros) in respect of non-pecuniary damage;

(ii) EUR 750 (seven hundred and fifty euros) in respect of costs and expenses, payable into the bank account of the applicant's lawyer in Bulgaria, Ms E. Nedeva;

(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 16 November 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President