FIFTH SECTION

CASE OF BORISOVA v. BULGARIA

(Application no. 56891/00)

JUDGMENT

STRASBOURG

21 December 2006

FINAL

21/03/2007

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 Borisova 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,
Mrs M. TSATSA-NIKOLOVSKA,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 27 November 2006,

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

PROCEDURE

1. The case originated in an application (no. 56891/00) 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 Tanya Borisova Borisova, a Bulgarian national who was born in 1969 and lives in Pazardzhik ("the applicant"), on 5 March 2000.

2. The applicant was represented by Mr Y. Grozev and Mrs D. Giteva, lawyers practising in Sofia.

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

4. The applicant alleged that the proceedings against her, which resulted in an administrative sanction of five days' detention, were unfair.

5. On 29 October 2004 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. On the morning of 8 September 1999 the applicant, who was unemployed at the time, went to the Employment Office to look for new job

offers. A considerable number of people, mainly women of Roma origin, had already gathered there and were waiting to enter the Employment Office. The applicant, also of Roma origin, lined up at the back of the queue that had formed in front of the building.

7. At around 11.15 a.m. part of the group of persons burst into the Employment Office. A police officer, who was there to enforce public order, managed to force them back outside. As the police officer was walking out of the building he was pushed by several women, who did not include the applicant. One of those women indicated to the police officer that the applicant, still at the back of the queue, had pushed them.

8. The police officer approached the applicant and requested to see her identity documents. She refused and after a short, impolite verbal exchange the police officer instructed her to accompany him to the police station so as to perform an identity check. The applicant did not comply and the police officer tried to handcuff her. In accordance with the statements later given by two police officers before the District Court, the applicant then slapped the police officer in the face and threw herself to the ground screaming. Another police officer then came over and assisted the first police officer in removing the applicant from the queue and escorted her to the police station. The time was 11.30 a.m.

9. At the police station, the applicant was placed in a cell. She was not allowed to use a phone to contact a next of kin or an attorney.

10. Approximately two hours later, the applicant was taken out of the cell and placed in a police car together with the two police officers who had arrested her. They were all taken to the Pazardzhik District Court where they arrived at 2.40 p.m.

11. Shortly before the start of the hearing the applicant was requested to sign an assessment of an act of minor hooliganism (акт за констатиране на дребно хулиганство : the “assessment”). The applicant alleged, which the Government challenged, that she did not have time to review the document. She signed the document without making any reservations. The applicant further alleged, which the Government did not expressly dispute, that she was not given a copy of the signed assessment.

12. The hearing began at 3 p.m. The applicant represented herself before the Pazardzhik District Court. She was charged with the administrative offence of minor hooliganism.

13. The hearing started with the assessment being read out in court. It was claimed that the applicant (1) had created a disturbance in front the Employment Office by pushing the other women in the queue; (2) had acted disruptively in response to the police officer's instructions and had resisted arrest; and (3) had slapped one of the police officer's in the face. When the applicant was asked whether she was aware of the assessment she responded as follows:

> "I am aware of it, actually I am not aware of the assessment of [an act of minor hooliganism]. Now that you read it out though, I understand what all of this is about, but it is not true, I have witnesses."

14. The court proceeded to question the applicant, the two police officers who arrested her and an official from the Employment Office.

15. The applicant refuted the accusations against her. She claimed that the police officers had dragged her to the police station and had kicked her repeatedly before placing her in a cell. She also claimed that she had never hit the police officer, but that he had injured himself on a tree during the arrest. On several occasions during the hearing the applicant claimed that she could summon witnesses who would corroborate her version of events. She also stated that she was unable to call witnesses for the hearing as she was not aware where the police officers were taking her when they placed her in the police car to take her to court.

16. Both police officers testified that the applicant had acted disruptively and had hit one of them.

17. The official from the Employment Office testified that she had seen the applicant lifting her hand, but had not seen her actually slap the police officer.

18. The hearing ended at 3.20 p.m.

19. After a short session in camera for deliberations, the Pazardzhik District Court delivered its verdict. It found the applicant guilty of minor hooliganism and imposed an administrative sanction of five days' detention at the Pazardzhik police station effective as of 11.30 a.m. on 8 September 1999. The court fully credited the testimonies of the police officers and the official from the Employment Office while it refused to accept that of the applicant, because she had made the statements in "the context of her defence". The judgment was not subject to appeal and entered into force immediately.

20. The applicant was then taken back to the Pazardzhik police station where she served her sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

21. The Decree on Combating Minor Hooliganism (the "Decree") was adopted in 1963. It envisages an expedited procedure for bringing to court minor offences of hooliganism which are punishable with an administrative sanction of up to fifteen days' detention at a police station or a fine of between 10 to 200 Bulgarian levs (approximately between 5.13 to 102 euros: section 1). It is unclear whether the Administrative Offences and Punishments Act, which sets out general principles of procedure, is applicable to the proceedings under the Decree (see two contradictory decisions on that issue: Тълкувателно решение № 46 от 16. X. 1979 г. по

н. д. № 36/79 г. на ОСНК and Определение № 9959 от 07.11.2003 г. по адм. д. № 9327/2003 г., I отд. на ВАС).

22. The expedited procedure under the Decree provides that an "assessment of an act of minor hooliganism" (акт за констатиране на дребно хулиганство) is prepared by the police or competent municipal authorities. The document is then presented to the accused for signature who has the right to make any reservations he or she deems fit (section 2).

23. If judicial proceedings are to be initiated against the accused, the assessment, together with the colleted data, is to be filed with the District Court immediately, or at the latest within twenty-four hours (section 3). In turn, a District Court judge, sitting alone, holds a hearing in the presence of the accused and examines the case within a further twenty-four hours (sections 4 and 5).

24. Witnesses are summoned at the discretion of the judge and the accused have the right to be represented by legal counsel (section 5).

25. The resulting judgment of the District Court judge is not subject to appeal and is to be executed immediately (section 7). Prior to the amendments of 1998 to the Administrative Offences and Punishments Act it was possible to file a petition for review of the judgments adopted under the Decree by following the procedure envisaged in the said act (Тълкувателно решение № 58 от 30.XII.1980 г., н.д. № 53/80 г., ОСНК). Following the amendments of 1998 that was no longer possible. Similarly it was not possible to file a cassation appeal under the above mentioned act (Определение № 9959 от 07.11.2003 г. по адм. д. № 9327/2003 г., I отд. на ВАС).

26. A judgment against an individual under the Decree is not considered a criminal conviction and is not entered into his criminal record.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

27. The applicant made several complaints under Article 6 §§ 1 and 3 of the Convention that the proceedings against her were unfair. In particular, she submitted that (1) the principle of equality of arms was violated, because she was in an unequal position in comparison to the prosecution; (2) the court was biased; (3) it heard primarily witness testimonies which supported the police's version of events; (4) it failed to give adequate reasoning in its judgment and did not perform a thorough analysis of the presented evidence; (5) she was not informed promptly and in detail of the nature and cause of the accusation against her; (6) she did not have adequate

time and facilities for the preparation of her defence as a result of the proceedings having been organised very quickly and in view of the fact that after her arrest she had been held in isolation at the police station; (7) she was not provided the opportunity to retain an attorney of her own choosing; and, (8) she was denied the right to obtain the attendance and examination of witnesses on her behalf under the same conditions as witnesses against her even though she indicted she could do this on several occasions during the court hearing of 8 September 1999.

The relevant part of Article 6 of the Convention provides:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law....
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;..."

A. Admissibility

28. The Government did not challenge the admissibility of the application. The applicant argued that in so far as the applicability of Article 6 of the Convention was not disputed by the Government that the application should be declared admissible.

29. The Court reiterates that in its case law it has established a criteria in order to determine whether an offence qualifies as "criminal" for the purposes of the Convention. In particular, that is the classification of the offence under national law, the nature of the proceedings and the nature and degree of severity of the penalty (see, for example, *Benham v. the United Kingdom*, judgment of 10 June 1996, *Reports of Judgments and Decisions* 1996-III, p. 756, § 56; *Garyfallou AEBE v. Greece*, judgment of 24 September 1997, *Reports* 1997-V, p. 1830, §§ 32-33; and *Lauko v. Slovakia*, judgment of 2 September 1998, *Reports* 1998-VI, p. 2504, §§ 56-57).

30. Noting that the Government did not challenge the admissibility of the application, the Court, by applying the above criteria to the present case and taking into account the five days' deprivation of liberty imposed on the applicant as a sanction for the offence of minor hooliganism, finds that the proceedings against her involved the determination of a "criminal charge" within the autonomous meaning of Article 6 § 1 of the Convention. Thus, the criminal limb of Article 6 of the Convention is applicable in the present case.

31. In addition, the Court notes that the application 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.

B. Merits

32. The Government submitted that the applicant was afforded a fair trial in the proceedings against her. They contested her claims of violations in that respect and her assertion that she was not promptly informed of the reasons of her arrest. They noted that she had signed the assessment without any reservation and considered her subsequent allegation before the domestic court that she was not aware of its contents as completely unsubstantiated.

33. The Government further noted that the Decree was intended to combat minor infractions of hooliganism, which were not considered a criminal offence, and the sanctions imposed there under were not entered into the criminal record of the respective individual. Moreover, the expedited procedure under the Decree was to take not longer than twenty four hours to complete. The Government thus argued that, in the light of the aforesaid and the circumstances of the present case, the applicant had adequate time for the preparation of her defence.

34. The Government also considered that the applicant had failed to avail herself of the right to be defended by counsel and argued that, even assuming that she was unable to contact a lawyer while in the police station, she could have requested to do so at the hearing on 8 September 1999 which she failed to do.

35. Lastly, the Government contended that Article 6 § 3 (d) of the Convention is not absolute and that the domestic courts have discretionary powers as to whether to call further witnesses. Moreover, they noted that three witnesses had been heard and that the applicant had failed to indicate the names of the witnesses she wanted to call and also how their testimonies might have contributed to the proceedings.

36. The applicant disagreed with the Government and stated that she was denied a fair trial in the proceedings on account of the expedited procedure under the Decree which resulted in her being convicted within three hours

of being detained during which time she did not have time to prepare her defence nor to retain legal counsel. Moreover, she considered the lack of a requirement under the said Decree to have legal counsel appointed *ex officio* contributed to the lack of fairness of the proceedings.

37. As the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the complaints under both provisions taken together (see, among many other authorities, the *F.C.B. v. Italy*, judgment of 28 August 1991, Series A no. 208-B, p. 20, § 29; *Poitrimol v. France*, judgment of 23 November 1993, Series A no. 277-A, p. 13, § 29; *Lala v. the Netherlands*, judgment of 22 September 1994, Series A no. 297-A, p. 12, § 26; and *Krombach v. France*, no. 29731/96, § 82, ECHR 2001-II).

38. The Court reiterates that the principle of equality of arms relied on by the applicant – which is one of the elements of the broader concept of fair trial – requires each party to be given a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent (see, among many other authorities, *Nideröst-Huber v. Switzerland*, judgment of 18 February 1997, *Reports* 1997-I, pp. 107-8, § 23, and *Coëme and Others v. Belgium*, nos. 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, § 102, ECHR 2000-VII).

39. The Court also points out that it is not within its province to substitute its own assessment of the facts and the evidence for that of the domestic courts and, as a general rule, it is for these courts to assess the evidence before them. The Court's task is to ascertain whether the proceedings in their entirety, including the way in which evidence was taken, were fair (see *Edwards v. the United Kingdom*, 16 December 1992, Series A no. 247-B, pp. 34-35, § 34; *Mantovanelli v. France*, 18 March 1997, *Reports* 1997-II, pp. 436-37, § 34; and *Bernard v. France*, 23 April 1998, *Reports* 1998-II, p. 879, § 37).

40. Turning to the specifics of the present case and the expedited procedure under the Decree, the Court recognises that the intention was to deal quickly and efficiently with petty offences of hooliganism. More significant disturbances of public order were to be dealt with as a criminal offence under the Criminal Code (Article 325). The Court further recognises that the existence and utilisation of expeditious proceedings in criminal matters is not in itself contrary to Article 6 of the Convention as long as they provide the necessary safeguards and guarantees contained therein. Thus, in order to ascertain whether the proceedings against the applicant, considered as a whole, were fair, the Court will individually address the complaints raised in that respect.

1. The right to be informed promptly of the nature and cause of the accusation against her and the right to have adequate time and facilities for the preparation of her defence

41. The Court reiterates that in criminal matters the provision of full, detailed information to the defendant concerning the charges against him – and consequently the legal characterisation that the court might adopt in the matter – is an essential prerequisite for ensuring that the proceedings are fair (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 52, ECHR 1999-II). Additionally, as regards the complaint under Article 6 § 3 (b) of the Convention, the Court considers that sub-paragraphs (a) and (b) of Article 6 § 3 are connected and that the right to be informed of the nature and the cause of the accusation must be considered in the light of a defendant's right to prepare his defence (see *Pélissier and Sassi*, cited above, § 54).

42. In the instant case, the Court notes that the applicant contended, which the Government disputed, that she was informed of the assessment and the accusations against her only just before being presented for trial before the Pazardzhik District Court and that she had no time to review the contents of that document (see paragraph 11 above).

43. Noting that the assessment does not indicate at what time on 8 September 1999 the applicant was served the document, the Court does not find it possible to determine how much time she had after becoming aware of its existence and, therefore, of the authorities' intentions to bring her to trial and to prosecute her. In this connection, the Court notes the applicant's claim before the domestic court that she was unaware of the upcoming proceedings against her at the time she was placed in the police car (see paragraphs 10 and 15 above). In any event, the time afforded to the applicant to prepare her defence could not have been more than a couple of hours, during which time she was either in transit to the court or was being held in a cell at the police station.

44. Furthermore, given the expedited nature of the proceedings, the applicant did not have the time and facilities to contact a lawyer or a next of kin prior to the start of the hearing on the afternoon of 8 September 1999, which lasted twenty minutes (see paragraphs 9-10 above). The Court reiterates in this respect that, although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial (see *Krombach*, cited above, § 89).

45. In conclusion, the Court finds that the applicant's right to be promptly informed in detail of the nature and cause of the accusation against her and her right to have adequate time and facilities for the preparation of her defence were infringed (see, *mutatis mutandis*, *Pélissier and Sassi*, cited above, §§ 60-63, and *Mattoccia v. Italy*, no. 23969/94, §§ 62-72, ECHR 2000-IX).

2. The right to obtain the attendance and examination of witnesses on her behalf under the same conditions as witnesses against her

46. The Court observes in the first place that the admissibility of evidence is primarily a matter for regulation by national law. The Court's task under the Convention is not to give a ruling as to whether statements of witnesses were properly admitted as evidence, but rather to ascertain whether the proceedings as a whole, including the way in which evidence was taken, were fair (see, among many other authorities, *Van Mechelen and Others v. the Netherlands*, judgment of 23 April 1997, *Reports* 1997-III, p. 711, § 50). In particular, "as a general rule, it is for the national courts to assess the evidence before them as well as the relevance of the evidence which defendants seek to adduce ... Article 6 § 3 (d) leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses" (see *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, pp. 32-33, § 33). It is accordingly not sufficient for a defendant to complain that he has not been allowed to question certain witnesses; he must, in addition, support his request by explaining why it is important for the witnesses concerned to be heard and their evidence must be necessary for the establishment of the truth (see *Engel and Others v. the Netherlands*, judgment of 8 June 1976, Series A no. 22, pp. 38-39, § 91; *Bricmont v. Belgium*, judgment of 7 July 1989, Series A no. 158, p. 31, § 89; and *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V).

47. The Court notes that in the present case, the applicant was not allowed to call any witnesses in her defence even though she asserted on several occasions during the court hearing of 8 September 1999 that she could do so and that their testimonies would refute the statements given by the witnesses for the prosecution (see paragraphs 13 and 15 above). It is true that she did not provide the court with the names of the witnesses she wanted to call, but considering the lack of time and facilities to prepare her defence (see paragraph 45 above), the Court finds it reasonable that she should not be expected to have done so immediately. Moreover, the Court notes the applicant's claim before the domestic court that she was not able to call any such witnesses because she was not informed where she was being taken when the police placed her in a vehicle to take her to court (see paragraphs 10 and 15 above).

48. In contrast, the Court finds that the prosecution had an unfair advantage over the applicant to prepare for the hearing and to find witnesses to support its case. As a result, the witness testimonies heard by the domestic court may appear one-sided and supported only the prosecution's version of the events in front of the Employment Office (see paragraphs 16-17 above).

49. Considering the above and that the applicant's complaint under Article 6 § 3 (d) of the Convention is closely connected to and partly results from her complaints under sub-paragraphs (a) and (b) of Article 6 § 3 (see

paragraphs 41-45 above), the Court finds that her right to obtain the attendance and examination of witnesses on her behalf under the same conditions as witnesses against her was infringed.

50. In conclusion, the Court considers that in the instant case the requirements of a fair trial were infringed and the rights of the defence were not respected. Accordingly, there has been a violation of Article 6 §§ 1 and 3 (a), (b) and (d) of the Convention taken together.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. 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

52. The applicant claimed 3,000 euros (EUR) in respect of non-pecuniary damage resulting from the pain, suffering and distress endured as a result of the violations of her rights under the Convention. She argued that regard should also be taken of the stressful conditions of her arrest and trial, the uncertainty she faced, the five days' detention she had to endure as a result of the unfair proceedings and the fact that she was detained in a police station not equipped for long periods of detention.

53. The Government did not submit comments on the applicant's claims for damage.

54. The Court considers that the applicant has undoubtedly suffered non-pecuniary damage as a result of the unfair proceedings against her which resulted in her detention for a period of five days in a police station (see paragraphs 9-20 and 50 above). Having regard to the circumstances of the present case and deciding on an equitable basis, the Court awards EUR 2,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

55. The applicant also claimed EUR 1,500 for the legal work provided by his representatives before the Court, consisting of their examination of the documents in the case, travel from Sofia to Pazardzhik, legal research and drafting of one letter and two submissions to the Court.

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

57. The Court reiterates that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents and within the time-limit fixed for the submission of the applicant's observations on the merits, "failing which the Chamber may reject the claim in whole or in part". In the instant case, it observes that the applicant failed to present a legal fees agreement with her representatives or an approved timesheet of the legal work performed before the Court. In addition, she did not present any invoices or receipts for any other costs. In view of the applicant's failure to comply with the aforesaid requirement, the Court makes no award for costs and expenses.

C. Default interest

58. 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 and 3 (a), (b) and (d) of the Convention on account of the lack of fairness of the proceedings against the applicant and the lack of respect of the rights of the defence;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable on the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 21 December 2006, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President