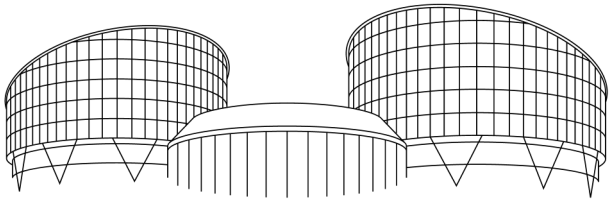

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF DONKA STEFANOVA v. BULGARIA

(Application no. 19256/03)

JUDGMENT

STRASBOURG

1 October 2009

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 Donka Stefanova v. Bulgaria,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 8 September 2009,

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

PROCEDURE

1. The case originated in an application (no. 19256/03) 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 Ms Donka Zhekova Stefanova, a Bulgarian national born in 1927 and living in Sofia ("the applicant"), on 3 June 2003. On 3 March 2006 the applicant died. On 16 December 2007 two of her daughters, Ms Nevenka Nikolaeva Stefanova-Istatkova and Ms Anka Nikolaeva Stefanova-Petrova, expressed their wish to pursue the proceedings in her stead.

2. The applicant was represented by Mr D. Mitkov and Ms V. Dimitrova, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. On 12 March 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3 of the Convention).

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4. On 31 July 1996 the applicant was run over by a motorist, Mr A.I. As a result of the accident, her clothes were damaged and became unusable.

Both of her arms, her right ear and her right leg were bruised. Shortly after that she was admitted to a hospital, where she spent a week, and was found to have a broken ankle and a traumatic brain injury.

5. After criminal proceedings which were later converted to administrative-penal ones, in a judgment of 10 March 1997 the Sofia District Court found A.I. responsible for the accident and fined him.

6. On 4 June 1997 the applicant brought a civil action against A.I. and his insurer. She sought 500,000 old Bulgarian levs (BGL)[1] for pecuniary and BGL 2,000,000 for non-pecuniary damage.

7. Between October 1997 and March 1999 the Sofia District Court held ten hearings, the first five of which were adjourned because A.I. had not been properly summoned. The court gave judgment on 19 April 1999, awarding the applicant BGL 75,000 compensation for pecuniary and BGL 266,000 for non-pecuniary damage. It found that there was no valid insurance contract between the insurance company and A.I. and for this reason held that the compensation was due solely by the latter.

8. On 29 April 1999 the applicant appealed, arguing that she had suffered more serious injuries and that the compensation awarded was inadequate. A.I. also appealed. As the Sofia District Court, through which the appeals had been filed, did not process them until October 2000, the applicant made a complaint about delays. As a result, on 10 November 2000 the chairman of the Sofia City Court instructed the district judge in charge of the case to send it without delay to the Sofia City Court for examination.

9. After holding a hearing on 7 June 2001, in a judgment of 11 July 2001 the Sofia City Court partly reversed the lower court's judgment and found that A.I.'s insurance company was liable. The court also increased the award in respect of non-pecuniary damage to 350 Bulgarian levs (BGN). However, the applicant's contention that her skull had been fractured in the car accident and that this had resulted in permanent injuries was considered unsubstantiated, as no evidence in support of that had been submitted.

10. On 10 August 2001 the applicant appealed on points of law. In November 2002, while the proceedings were pending, the 1952 Code of Civil Procedure was amended and provided that henceforth the Supreme Court of Cassation had jurisdiction to hear only cases in which the amount in issue was higher than BGN 5,000. The amendment entered into force with immediate effect and was applicable to pending cases. Accordingly, in a decision of 25 November 2002 the Supreme Court of Cassation terminated the proceedings on the ground that the amount of the compensation claimed was below the minimum for which that court had jurisdiction to hear cases. The applicant was informed of the decision in a letter of 9 December 2002. She did not appeal against it.

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1. On 5 July 1999 the Bulgarian lev was revalorized. One new Bulgarian lev (BGN) equals 1,000 old Bulgarian levs (BGL).

THE LAW

I. PRELIMINARY REMARK

11. The Court notes that the applicant died on 3 March 2006, while the case was pending before the Court, and that two of her heirs, Ms Nevenka Nikolaeva Stefanova-Istatkova and Ms Anka Nikolaeva Stefanova-Petrova, expressed the wish to pursue the application on her behalf. It has not been disputed that they are entitled to do so and the Court sees no reason to hold otherwise (see, among many other authorities, *Horváthová v. Slovakia*, no. 74456/01, §§ 26 and 27, 17 May 2005).

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

12. The applicant complained under Article 6 § 1 of the Convention that her civil action had not been examined within a "reasonable time". Article 6 § 1 provides as follows:

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

A. Admissibility

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

B. Merits

14. The period to be taken into consideration began on 4 June 1997 and ended on 9 December 2002. It thus lasted a little over five and a half years for three levels of jurisdiction.

15. According to the Court's settled case-law, 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, *Rachevi v. Bulgaria*, no. 47877/99, § 73, 23 September 2004).

16. The parties presented various arguments as to the way in which these criteria should apply in the instant case.

17. The Court does not consider that the case presented any particular complexity, as A.I.'s responsibility for the accident had already been established in prior proceedings (see *Rachevi*, cited above, § 76). The only

truly contentious issues were the extent of the damage suffered by the applicant and whether A.I. had been validly insured. It does not seem that the applicant was responsible for any major delays, which were mainly the result of the authorities' failure to summon A.I. properly for five hearings, process the appeals against the Sofia District Court's judgment in a timely fashion and examine the applicant's appeal on points of law for more than one year and three months. Seen against the backdrop of what was at stake for the applicant – payment of compensation for serious injures sustained in a road accident (ibid., § 91, with further references) – these delays and the global duration of the proceedings cannot be seen as reasonable.

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

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

19. The applicant complained under Article 6 § 1 of the Convention that the damages which she had been awarded had been too low. She further complained under the same provision that following the amendment to the 1952 Code of Civil Procedure her case had ceased to be reviewable by the Supreme Court of Cassation. Finally, she complained under Article 13 of the Convention that domestic law did not provide an effective mechanism for the vindication of her civil rights.

20. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

21. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

23. The applicant's heirs each claimed BGN 550, plus interest as from 31 July 1996, as compensation in respect of the non-pecuniary damage suffered as a result of the alleged unfairness of the proceedings. They also

claimed BGN 500 each as compensation in respect of the non-pecuniary damage suffered on account of the excessive length of the proceedings.

24. The Government did not comment on the claims.

25. The Court observes that in the present case an award of just satisfaction can only be based on the violation of the reasonable-time requirement of Article 6 § 1 of the Convention. Ruling in equity, as required under Article 41 of the Convention, it awards each of the applicant's two heirs, who continued the proceedings in her stead, the full amount claimed, which, converted into euros (EUR), comes to EUR 256. To those amounts should be added any tax that may be chargeable to the applicant or her heirs.

B. Costs and expenses

26. The applicant's heirs sought the reimbursement of BGN 900 for costs and expenses incurred before the domestic courts and the Court.

27. The Government did not comment on the claims.

28. According to the Court's case-law, applicants are entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses in the domestic proceedings and considers it reasonable to award the sum of EUR 400, plus any tax that may be chargeable to the applicant's heirs, for the proceedings before the Court.

C. Default interest

29. 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 complaint concerning the excessive length of the proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with 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) to Ms Nevenka Nikolaeva Stefanova-Istatkova, EUR 256 (two hundred fifty-six euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) to Ms Anka Nikolaeva Stefanova-Petrova, EUR 256 (two hundred fifty-six euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) jointly to Ms Nevenka Nikolaeva Stefanova-Istatkova and Ms Anka Nikolaeva Stefanova-Petrova, EUR 400 (four hundred euros), plus any tax that may be chargeable to them, in respect of costs and expenses;

(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 claim for just satisfaction.

Done in English, and notified in writing on 1 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President