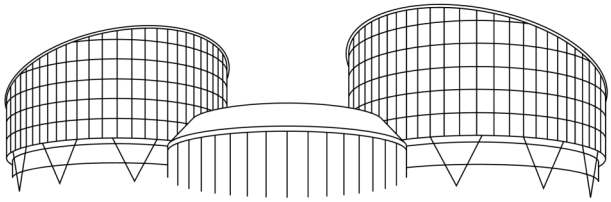

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KOTSEVA-DENCHEVA v. BULGARIA

(Application no. 12499/05)

JUDGMENT

STRASBOURG

10 June 2010

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 Kotseva-Dencheva v. Bulgaria,

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 11 May 2010,

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

PROCEDURE

1. The case originated in an application (no. 12499/05) 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, Ms Margarita Ilieva Kotseva-Dencheva ("the applicant"), on 22 March 2005.

2. The applicant was represented by Ms S. Stefanova, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. On 19 January 2009 the President of the Fifth Section communicated 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

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1960 and lives in Veliko Tarnovo.

5. The applicant worked as the medical director of a psychiatric hospital. In 1996 she was laid off. On 17 February 1997 she brought an action for unfair dismissal against the Ministry of Health.

6. On 7 July 1999 the Sofia District Court found that the applicant's dismissal had been unlawful and restored her to her position. The Ministry of Health filed an appeal.

7. The Sofia City Court, which examined the appeal, held hearings on 18 February, 10 March and 2 June 2000, with the next hearing being scheduled for 8 November 2000. On 13 June 2000 the applicant filed a complaint about delays (see paragraph 15 below). On 23 June 2000 the President of the Sofia Court of Appeal found that the complaint was well-founded and instructed the lower court to schedule the hearing earlier.

8. The Sofia City Court held a hearing on 20 July 2000. On 15 September 2000 it gave a judgment, finding that the applicant's action against the Ministry of Health was inadmissible.

9. On an appeal by the applicant, on 30 May 2002 the Supreme Court of Cassation quashed the Sofia City Court's judgment and remitted the case. The Sofia City Court gave a new judgment on 9 August 2004, upholding the Sofia District Court's judgment of 7 July 1999.

10. On 23 December 2004 the Ministry of Health filed an appeal on points of law.

11. On 20 June 2006, 4 July 2007 and 1 February 2008 the applicant filed requests with the Supreme Court of Cassation that the case be examined more expeditiously.

12. The Supreme Court of Cassation held a hearing on 15 February 2008. In a judgment of 4 March 2008 it quashed the Sofia City Court's judgment of 9 August 2004 and remitted the case for new consideration.

13. The Sofia City Court examined the case once again and in a judgment of 12 January 2009 upheld the Sofia District Court's judgment of 7 July 1999, finding the applicant's dismissal to be unlawful and reinstating her to her position.

14. On 20 February 2009 the Ministry of Health lodged a new appeal on points of law. On 19 August 2009 the Supreme Court of Cassation declared it admissible. A hearing on the merits is scheduled for 17 November 2010.

II. RELEVANT DOMESTIC LAW

15. Complaints about delays were provided for in Article 217a of the Code of Civil Procedure of 1952, in force until 1 March 2008. The provision was introduced in July 1999. A complaint about delays was to be examined by the president of the higher court, who might order specific measures to be taken to speed up the proceedings.

16. Pursuant to Articles 255-257 of the Code of Civil Procedure of 2007, in force since 1 March 2008, parties to civil proceedings can file a request for setting a time-limit for carrying out certain procedural actions. The request is examined by a judge in the respective higher court.

THE LAW

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

17. The applicant complained that the length of the proceedings in her case was unreasonable. She relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. The Court is of the view that the complaint falls to be examined solely under Article 6 § 1 of the Convention, which, in so far as relevant, reads:

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

18. The Government acknowledged that the length of the proceedings was unreasonable.

A. Admissibility

19. 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

20. The period to be taken into consideration began on 17 February 1997, when the applicant brought an action for unfair dismissal (see paragraph 5 above) and has not yet ended, as a hearing before the Supreme Court of Cassation is scheduled for 17 November 2010 (see paragraph 14 above). The period has thus, up to the present, lasted more than thirteen years for three levels of jurisdiction.

21. 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 examining cases concerning employment disputes States are under an obligation to proceed with special diligence (see *Ruotolo v. Italy*, 27 February 1992, § 17, Series A no. 230-D).

22. In the present case, the Government acknowledged that the length of the proceedings was unreasonable (see paragraph 18 above) and the Court sees no reason to reach a different conclusion. It notes that the proceedings have already lasted for more than thirteen years and are still pending (see paragraph 20 above), and that they concern an employment dispute, which obliges the authorities to act with special diligence (see paragraph 21

above). The delays in the proceedings appear to have been attributable to the domestic courts, who remitted the case on several occasions and delayed its examination. There appear, on the other hand, to be no substantive delays attributable to the applicant.

23. The Court concludes therefore that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

24. The applicant further complained under Article 13 of the Convention that she had no effective remedies in respect of the length of the proceedings. Article 13 reads:

> "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."

25. The Government did not comment on this complaint.

A. Admissibility

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

B. Merits

27. Article 13 of the Convention 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. Remedies available to a litigant at domestic level are "effective", within the meaning of Article 13, if they prevent the alleged violation or its continuation, or provide adequate redress for any violation that has already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 156-7, ECHR 2000-XI).

28. In the present case, although the applicant made use of a remedy available under domestic law, namely a complaint about delays, she only obtained the speeding up of the proceedings by three and a half months, as a hearing before the Sofia City Court, scheduled initially for 8 November 2000, was rescheduled for 20 July 2000 (see paragraphs 7 and 8 above). However, the Court is not persuaded that the remedy was capable of having a significant impact on the duration of the proceedings as a whole (see *Kuncheva v. Bulgaria*, no. 9161/02, § 40, 3 July 2008), given that it became available only after July 1999, whereas the proceedings started in February 1997 (see paragraphs 5 and 15 above), that the applicant could not resort to it in respect of the delays occurring while the case was pending before the

Supreme Court of Cassation (see *Pavlova v. Bulgaria*, no. 39855/03, § 31, 14 January 2010), and that it could not have prevented the delays flowing from the numerous remittals of the case.

29. The Court does not find it necessary to examine whether the remedy provided for in the new Code of Civil Procedure, namely a request for setting a time-limit for carrying out certain procedural actions (see paragraph 16 above), could have effectively sped up the proceedings, because they had already been excessively protracted before its introduction in March 2008.

30. The Court has not been informed of the existence of any other remedy capable of speeding up the proceedings in the case, or of any remedy capable of providing adequate redress for their excessive length.

31. Therefore, there has been a violation of Article 13 in the case.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. Under the head of pecuniary damage, the applicant claimed 49,937 euros (EUR) for lost income for the period from 1996 to 2009. Furthermore, she claimed EUR 25,000 in respect of non-pecuniary damage, contending that she had suffered frustration and distress for a period of many years.

34. The Government contested these claims.

35. The Court does not discern any causal link between the violation found and the pecuniary damage alleged (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 102, ECHR 2007-IV). Consequently, there is no justification for making any award under this head. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage. Ruling on an equitable basis, it awards award her EUR 7,300 under that head, plus any tax that might be chargeable.

B. Costs and expenses

36. The applicant also claimed EUR 3,220 for the costs and expenses incurred before the Court. In support of this claim she presented a time-sheet for the work performed by her legal representative, Ms Stefanova. She

requested that any amount awarded under this head be transferred directly into the bank account of Ms Stefanova.

37. The Government contested this claim.

38. According to the Court's case-law, an applicant is 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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 600 covering costs under all heads, plus any tax that may be chargeable to the applicant, to be paid directly into Ms Stefanova's bank account.

C. Default interest

39. 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 the applicant, 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) EUR 7,300 (seven thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 600 (six hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred directly into the bank accounts of the applicant's legal representative;

(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 claims for just satisfaction.

Done in English, and notified in writing on 10 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President