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

FIFTH SECTION

CASE OF KOSTADIN MIHAYLOV v. BULGARIA

(Application no. 17868/07)

JUDGMENT

STRASBOURG

27 March 2008

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 Kostadin Mihaylov v. Bulgaria,

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

Peer Lorenzen, *President*,
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 4 March 2008,

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

PROCEDURE

1. The case originated in an application (no. 17868/07) 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 Mr Kostadin Georgiev Mihaylov, a Bulgarian national who was born in 1922 and lives in Plovdiv ("the applicant"), on 27 March 2007.

2. The applicant was represented by Ms S. Stefanova and Mr M. Ekimdzhiev, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged that, by delivering two contradictory rulings on who was the proper defendant to an action which he had filed against the authorities, the courts had prevented him from having the merits of his case adjudicated and had thus barred him from effectively asserting his claim.

4. On 7 June 2007 the Court decided to give priority to the application under Rule 41 of the Rules of Court and 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

A. The applicant's illness and application for a disability pension

5. In 2001 the applicant became fully blind in both eyes because of glaucoma.

6. On 7 January 2002 he asked the Labour-Expert Medical Commission specialising in eye diseases in Plovdiv ("the LEMC") to certify him as a disabled person.

7. In a decision of 5 September 2002 the LEMC found that as a result of his illness the applicant was completely incapable of seeing with either eye and had thus 100% lost his ability to work for the rest of his life. It determined that the start date of the disability was 12 December 2001, the date on which he had first been examined by a medical commission specialising in eye diseases.

8. On 11 September 2002 the applicant applied to the Regional Department of Social Security in Plovdiv for a disability pension and an attendance allowance.

9. In a decision of 1 October 2002 the head of the pensions division of the Regional Department of Social Security in Plovdiv set the amount of the applicant's disability pension and his attendance allowance, setting the start date as 11 September 2002, the date of the applicant's application.

10. The applicant appealed, arguing that the start date should have been set as 12 December 2001, when his disability had first been conclusively determined. In a decision of 28 January 2003 the director of the Regional Department of Social Security in Plovdiv dismissed the appeal. He found that the LEMC had determined the start date of the applicant's disability as 12 December 2001. The applicant had applied for a pension on 11 September 2002, that is, more than six months after the accrual of his right, whereas under Article 94 of the Social Security Code of 1999 (see paragraph 29 below) pensions were granted from the date of accrual of the right to a pension, but only if the person concerned had applied within six months of that date. If this time-limit was missed the pension was granted from the date of application, which in the instant case was 11 September 2002.

11. The applicant sought judicial review, arguing, *inter alia*, that the missing of the six-month time-limit had not been his fault, but a result of the slow pace at which the LEMC had processed his case. In a judgment of 22 July 2003 the Plovdiv Regional Court quashed the director's decision, agreeing that the applicant's failure to comply with the time-limit had not

been due to his oversight, but to the fact that he had only obtained the decision of the LEMC after that time-limit had expired.

12. The Regional Department of Social Security in Plovdiv appealed on points of law to the Supreme Administrative Court. In a final judgment of 9 August 2004 the Supreme Administrative Court upheld the lower court's judgment, fully agreeing with its reasoning.

B. The first action for compensation

13. On 22 March 2005 the applicant brought an action against the National Social Security Institute. He relied on section 1 of the State Responsibility for Damage Act of 1988 (see paragraph 24 below) and sought 2,000 Bulgarian levs (BGN) in non-pecuniary damages for the frustration he had experienced as a result of the unlawful decisions of the social security authorities.

14. In a judgment of 1 July 2005 the Plovdiv District Court awarded the applicant BGN 500 in non-pecuniary damages. It held, *inter alia*, that the action had been properly brought against the National Social Security Institute, which was the authority responsible for social security matters.

15. Both the applicant and the National Social Security Institute appealed. The National Social Security Institute argued, *inter alia*, that it was not the proper defendant in the case.

16. In a final judgment of 28 October 2005 the Plovdiv Regional Court quashed the lower court's judgment and dismissed the action. It noted that, according to the National Social Security Institute's internal rules, it had territorial subdivisions – the Regional Departments of Social Security, which had their own bank accounts and balance sheets. The unlawful decision from which the applicant's alleged damage arose had been made by the head of a territorial subdivision of the Institute. Therefore, the proper defendant was not the Institute, but its Regional Department. The court ordered the applicant to pay BGN 80 in court fees.

C. The second action for compensation

17. On 11 October 2006 the applicant brought an identical action, but this time, in line with the Plovdiv Regional Court's holding (see paragraph 16 above), named as a defendant the Regional Department of Social Security in Plovdiv.

18. In a decision of 24 October 2006 the Plovdiv District Court declared the action inadmissible. It found that the National Social Security Institute was a legal person and that the Regional Department of Social Security in Plovdiv was only one of its subdivisions. It noted that according to interpretative decision no. 3 of 2004 of the Supreme Court of Cassation (see paragraph 26 below), claims under section 1 of the State Responsibility for

Damage Act of 1988 had to be brought against those authorities which had a legal personality, not against their territorial departments or subdivisions having no legal personality. The Regional Department of Social Security in Plovdiv did not have such a personality. The interpretative decision was binding on all courts, but had apparently been disregarded by the Plovdiv Regional Court in the previous proceedings. The court further stated that, despite the evident injustice created by the combination of its ruling and the earlier ruling of the Plovdiv Regional Court, it could not continue examining an action against an improper defendant and was bound to discontinue the proceedings.

19. The applicant appealed. He said that the decision had infringed his right of access to a court and explained that he had been forced to bring an action against the Regional Department of Social Security in Plovdiv only because the Plovdiv Regional Court had stated that it, and not the National Social Security Institute, was the proper defendant to actions under section 1 of the State Responsibility for Damage Act of 1988.

20. In a decision of 27 November 2006 the Plovdiv Regional Court, sitting in a different formation from the one in the first proceedings, dismissed the appeal. It also held that the proper defendant was the National Social Security Institute, which was a legal person, and not the Regional Department of Social Security in Plovdiv, which was merely one of its territorial subdivisions. The fact that the Regional Department had its own bank account and balance sheet did not alter this conclusion. The court referred to the Supreme Court of Cassation's interpretative decision no. 3 of 2004 (see paragraph 26 below). It went on to state that the situation was indeed unfair and that the applicant was in an impasse, created, on the one hand, by the fact that the interpretative decision was mandatory and, on the other hand, by the fact that its prior judgment had dismissed the action against the National Social Security Institute. Unfortunately, the court was not in a position to resolve that impasse.

21. The applicant appealed on points of law to the Supreme Court of Cassation. He reiterated his arguments regarding access to a court.

22. In a final decision of 10 January 2007 the Supreme Court of Cassation upheld the lower court's decision with almost identical reasoning.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution of 1991

23. Article 7 of the Constitution of 1991 provides as follows:

> "The State shall be liable for damage caused by the unlawful decisions or actions of its organs and agents."

B. The State Responsibility for Damage Act of 1988

24. Section 1(1) of the State Responsibility for Damage Caused to Citizens Act of 1988 („Закон за отговорността на държавата за вреди, причинени на граждани“ – this was the original title; on 12 July 2006 it was changed to the State and Municipalities Responsibility for Damage Act, „Закон за отговорността на държавата и общините за вреди“), as in force at the material time, provided that the State was liable for damage suffered by private persons as a result of unlawful decisions, actions or omissions by civil servants, committed in the course of or in connection with the performance of their duties. Section 1(2), as in force at the material time, provided that compensation for damage arising from unlawful decisions could be claimed after the decisions concerned had been annulled in prior proceedings.

25. Section 7 of the Act provides that an action for compensation has to be brought against the authorities whose unlawful decisions, actions or omissions have caused the damage.

C. Interpretative decision no. 3 of 2004 of the Plenary Meeting of the Civil Chambers of the Supreme Court of Cassation

26. In that interpretative decision (тълк. реш. № 3 от 22 април 2004 г. на ВКС по тълк.д. № 3/2004 г., ОСГК), made on 22 April 2004 pursuant to the proposal of the President of the Supreme Court of Cassation, the Plenary Meeting of the Civil Chambers of that court resolved a number of contentious issues relating to the construction of various provisions of the State Responsibility for Damage Act of 1988. In particular, it noted that, according to section 7 of the Act, actions for compensation had to be directed against the authorities whose unlawful decisions, actions or omissions had caused the damage (see paragraph 25 above). It held that the proper defendants to these actions were those authorities which had legal personality, not their territorial subdivisions or departments that did not have such a personality.

27. In accordance with section 86 § 2 of the Judicial Power Act of 1994 („Закон за съдебната власт“), interpretative decisions are binding on the judiciary and the executive branch.

D. The Social Security Code of 1999

28. Under Article 33 § 1 of that Code, state social security is managed by the National Social Security Institute. Article 33 § 2 provides that the Institute is a legal person having its seat in Sofia and that it establishes territorial subdivisions.

29. Article 94 § 1 of that Code provides that pensions are granted from the date when the right to a pension has accrued, provided that the application for a pension has been made not later than six months after the accrual of the right. If the application has been made after the expiry of that time-limit, the pension is granted from the date when the application has been made.

30. A new paragraph 2 was added to Article 94, with effect from 1 January 2005. It provides that if the persons concerned have made their applications for a disability pension not later than one month after the entry into force of the decision of the LEMC, the pension is granted from the date when they requested the LEMC to certify them as disabled persons.

THE LAW

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

31. The applicant alleged that by delivering two contradictory rulings on who was the proper defendant to his action the courts had prevented him from having the merits of his case adjudicated. He relied on Article 6 § 1 of the Convention, which reads, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

A. Admissibility

32. The Court considers 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.

B. Merits

33. The applicant said that he had brought his first action against the National Social Security Institute, in line with the Supreme Court of Cassation's interpretative decision no. 3 of 2004. However, that decision had been disregarded by the Plovdiv Regional Court. The only avenue still open to the applicant after that had been to bring an action against the Regional Department of Social Security in Plovdiv, in line with the Plovdiv Regional Court's holding in the first proceedings. However, in the second proceedings

that same court had adopted a completely opposite position, relying on the same interpretative decision which it had earlier disregarded. The applicant could not lodge a fresh action against the National Social Security Institute, because the Plovdiv Regional Court's judgment of 28 October 2005 was *res judicata*. These absurd actions of the Plovdiv Regional Court had put the applicant in an impossible situation and had deprived him of his right to have the merits of his compensation claim adjudicated.

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

35. The Court notes at the outset that it is clear that the proceedings issued by the applicant concerned a genuine dispute about his right to compensation. The right was a civil one, because the subject matter of the applicant's actions – compensation for the damage caused by an unlawful decision of a public authority – was pecuniary in nature (see *Editions Périscope v. France*, judgment of 26 March 1992, Series A no. 234-B, pp. 65-66, §§ 39-40). Article 6 § 1 was thus applicable.

36. The Court must therefore examine whether the judgments and the decisions delivered by the national courts pursuant to the two actions brought by the applicant interfered with his right under Article 6 § 1 to obtain a judicial determination of his alleged right to compensation.

37. It reiterates on this point that this provision secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access constitutes one aspect (see *Golder v. the United Kingdom*, judgment of 21 February 1975, Series A no. 18, pp. 13-18, §§ 28-36; and *Osman v. the United Kingdom*, judgment of 28 October 1998, *Reports of Judgments and Decisions* 1998-VIII, p. 3166, § 136, and p. 3169, § 147).

38. While it is clear that in the instant case the applicant was not prevented from commencing his two actions, that does not suffice, as the right of access to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (see *Kutić v. Croatia*, no. 48778/99, § 25, ECHR 2002-II; *Lungoci v. Romania*, no. 62710/00, § 35, 26 January 2006; *Yanakiev v. Bulgaria*, no. 40476/98, § 68, 10 August 2006; and *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, § 258, 15 March 2007).

39. The Court must thus verify whether the national courts in fact determined the dispute, as the mere facts that the applicant's first action was dismissed and his second action was declared inadmissible do not mean that he was denied access to a court, provided that the dispute which he submitted for adjudication was the subject of a genuine examination (see, *mutatis mutandis*, *Obermeier v. Austria*, judgment of 28 June 1990, Series A no. 179, p. 21, § 68; and *Yanakiev*, cited above, § 69).

40. The Court notes in this connection that the sole reason relied on by the Plovdiv Regional Court for dismissing the applicant's first action and by all levels of court for declaring his second action inadmissible was that he had not directed his claim against the proper defendant (see paragraphs 16, 18, 20 and 22 above). While in the first proceedings they opined that this defendant was the Regional Department of Social Security in Plovdiv, in the second they held that it was its parent authority – the National Social Security Institute. The courts thus twice disposed of the case on purely procedural grounds, without touching upon the substance of the dispute (see, by contrast, *Z and Others v. the United Kingdom* [GC], no. 29392/95, §§ 94-101, ECHR 2001-V).

41. It is not for the Court to determine which authority is the proper defendant to actions brought under the State Responsibility for Damage Act of 1988. This is a question of Bulgarian law which falls within the exclusive jurisdiction of the Bulgarian courts. Indeed, the Supreme Court of Cassation has given a binding interpretative decision to settle it (see paragraph 26 above). However, the Court observes that as a result of the conflicting positions taken by the domestic courts in the two sets of proceedings mounted by the applicant, he was wholly prevented from having the merits of his claim determined by a court.

42. No justification has been offered for the situation thus obtained. In particular, neither the national courts nor the Government have sought to argue that this denial of access to a court was pursuing a legitimate aim and was in a reasonable relationship of proportionality between the means employed and the aim sought to be achieved. On the contrary, in declaring the applicant's second action inadmissible the domestic courts expressly commented that the situation thus obtained was "unfair" and amounted to an "evident injustice" (see paragraphs 18 and 20 above). It must furthermore be noted that the courts' rulings impaired the very essence of the applicant's right, as it does not appear that he could resort to any other avenue of redress (see, *mutatis mutandis*, *Osman*, p. 3171, § 153; *Yanakiev*, § 72 *in fine*, both cited above; and, by contrast, *McElhinney v. Ireland* [GC], no. 31253/96, § 39, ECHR 2001-XI (extracts)).

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

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

44. The applicant alleged that the impossibility of obtaining a ruling on the merits of his claim had impeded him from recovering the non-pecuniary damages he was seeking. He relied on Article 1 of Protocol No. 1, which provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest

and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

45. The applicant submitted that his claim for damages had amounted to a "possession" within the meaning of Article 1 of Protocol No. 1, in that he had had a legitimate expectation that he would obtain an award of compensation. The courts' actions had prevented him from obtaining this award; they had therefore amounted to an interference with his right to peacefully enjoy his possessions. This interference had not been lawful. The law was clear on the issue of which was the proper defendant in the action brought by the applicant. However, in the first proceedings the Plovdiv Regional Court had refused to follow the imperative statutory provisions on this issue and the binding interpretative decision of the Supreme Court of Cassation. It had later refused to examine the second action despite its being directed against a defendant which it had indicated to be legitimate in the first one.

46. The applicant further argued that there was no legitimate public interest served by the interference. Even assuming however that it pursued a legitimate aim, it was not proportionate to its attainment. This was so because he had been prevented from receiving any compensation whatsoever by the unlawful decision of the social security authorities. By preventing the applicant from effectively suing these authorities, the courts had improperly shielded them from liability.

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

48. The Court considers that this complaint is closely linked to the one examined above and must likewise be declared admissible.

49. However, having regard to its conclusions under Article 6 § 1 of the Convention and its finding that the applicant was unduly prevented from obtaining a judicial determination of his alleged entitlement to compensation, the Court considers that it cannot speculate as to what the situation would have been if the applicant had had effective access to a court. Consequently, it does not consider it necessary to rule on the question whether the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1 and, accordingly, on the complaint based on that provision (see *Glod v. Romania*, no. 41134/98, § 46, 16 September 2003; *Albina v. Romania*, no. 57808/00, § 43, 28 April 2005; *Lungoci*, cited above, § 48; and *Yanakiev*, cited above, § 82).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. The applicant alleged that he had not had effective remedies against the violations alleged above. He relied on Article 13 of the Convention, which provides 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."

51. In the applicant's submission, he had used all available remedies to vindicate his right to compensation. He had instituted, to no avail, two sets of proceedings. The court's unfavourable rulings had entered into force and no other remedies existed.

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

53. The Court considers that this complaint is closely linked to the ones examined above and must likewise be declared admissible.

54. However, it considers that it is not necessary to determine whether there has been a breach of Article 13, because, where – as here – the right claimed is a civil one, the requirements of this provision are less strict than, and are absorbed by, those of Article 6 § 1 (see, as recent authorities, *Związek Nauczycielstwa Polskiego v. Poland*, no. 42049/98, § 43, ECHR 2004-IX; and *Yanakiev*, cited above, § 76).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

55. 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

56. The applicant claimed 10,000 euros (EUR) in respect of the non-pecuniary damage sustained as a result of the impossibility to have his claim determined by a court, contrary to Article 6 § 1 of the Convention. He said that the absurd manner in which the domestic courts had approached his action had caused him frustration and humiliation, and had stirred in him feelings of hopelessness. He further claimed EUR 10,000 for the alleged breach of Article 1 of Protocol No. 1 and EUR 5,000 for the alleged violation of Article 13 of the Convention.

57. The Government did not comment.

58. The Court notes that in the present case an award of just satisfaction can only be based on the fact that the applicant did not have the benefit of

the guarantees of Article 6 § 1 of the Convention. Ruling on an equitable basis, as required by Article 41 of the Convention, the Court awards him EUR 3,000, plus any tax that may be chargeable.

59. The Court also considers it necessary to point out that a judgment in which it finds a violation of the Convention or its Protocols imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see *Lungoci*, cited above, § 55, citing *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 487, ECHR 2004-VII). In the case of a violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of this provision not been disregarded (see *Lungoci*, § 55; and *Yanakiev*, § 89, both cited above; as well as, *mutatis mutandis*, *Sejdovic v. Italy* [GC], no. 56581/00, § 127, ECHR 2006-II).

60. The Court is therefore of the view that the most appropriate form of redress in cases where it finds that an applicant has not had access to a tribunal in breach of Article 6 § 1 of the Convention would, as a rule, be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial (see *Lungoci*, § 56, with further references; and *Yanakiev*, § 90, both cited above).

B. Costs and expenses

61. The applicant sought the reimbursement of EUR 2,730 in lawyers' fees for the domestic proceedings and the proceedings before the Court (39 hours of work at EUR 70), as well as EUR 60 for postage and clerical expenses. He requested that any amount awarded by the Court under this head be paid into the bank account of his representatives, Ms S. Stefanova and Mr M. Ekimdzhiev.

62. The Government did not comment.

63. According to the Court's case-law, an applicant is entitled to the reimbursement of his 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, having regard to the information in its possession and the above criteria, and noting that the applicant has been granted EUR 850 in legal aid, the Court considers it reasonable to award the sum of EUR 1,000, plus any tax that may be chargeable to the applicant, covering costs under all heads. This amount is to be paid into the bank account of the applicant's representatives, Ms S. Stefanova and Mr M. Ekimdzhiev.

C. Default interest

64. 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 is no need to examine the complaint under Article 1 of Protocol No. 1;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *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 on the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 1,000 (one thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, the said sum to be paid into the bank account of the applicant's representatives, Ms S. Stefanova and Mr M. Ekimdzhiev;
   (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;

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

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President