FIFTH SECTION

CASE OF SIRMANOV v. BULGARIA

(Application no. 67353/01)

JUDGMENT

STRASBOURG

10 May 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 Sirmanov v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 10 April 2007,

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

PROCEDURE

1. The case originated in an application (no. 67353/01) 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 Nikolay Tsonev Sirmanov, a Bulgarian national born in 1968 and living in Gabrovo ("the applicant"), on 19 November 2000.

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

3. On 26 September 2005 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

4. In a judgment of 8 February 1990 the Pleven Military Court convicted the applicant of a criminal offence, which had been, according to this court, committed during the applicant's probationary period after his early release from prison, and sentenced him, *inter alia*, to serve the remainder of the sentence from his prior conviction, which the applicant did, between 21 December 1989 and 20 March 1990. In a judgment of 16 May 1994 the

Supreme Court quashed that judgment and ruled that the applicant should not have served the remainder of his prior prison sentence.

5. In 1998 the applicant brought proceedings against the Pleven Military Court under section 2(6) the State Responsibility for Damage Act (see paragraph 16 below), seeking 25,0000,000 old Bulgarian levs (BGL)[1] as compensation for the time he had spent in custody between 21 December 1989 and 20 March 1990.

6. In a judgment of 7 June 1999 the Pleven Regional Court found that the applicant's deprivation of liberty during that period had been unlawful within the meaning of above-mentioned provision and awarded him BGL 1,000,000 in non-pecuniary damages, together with interest at the statutory rate, from 21 December 1989 until the final settlement of the judgment debt. It dismissed the remainder of the applicant's claim.

7. As none of the parties appealed, the judgment entered into force on 17 June 1999.

8. The applicant obtained a writ of execution against the Pleven Military Court on 17 June 1999. On the same date he presented it to the chairperson of that court for payment. The chairperson made a copy of the writ and returned the original to the applicant.

9. As no payment was made, the applicant complained to numerous State agencies and bodies.

10. In a letter of 14 September 1999 the Inspectorate of the Ministry of Justice informed the applicant that the amount owed to him was BGL 6,128,316. Since this was a significant amount for the budget of the Pleven Military Court, the chairperson of that court had made an express request for funding before the Supreme Judicial Council – the body responsible for managing the judiciary's budget. The debt would be paid fully or in part, depending on the amount of the available funding.

11. On 17 April 2000 the applicant asked the Pleven Regional Court to issue him a duplicate of the writ of execution, because the original had been stolen. His request was examined at a hearing on 16 June 2000 and the duplicate was issued on 9 August 2000.

12. In the meantime, on 23 May 2000, the Supreme Judicial Council allotted to the Pleven Military Court 1,000 new Bulgarian levs (BGN) with a view to paying the debt towards the applicant. On 1 June 2000 the Pleven Military Court paid the applicant BGN 1,000, apparently intended to be imputed to the principal of the debt. However, the remainder of the debt remained outstanding.

13. The applicant subsequently complained to various authorities, such as the President of the Republic, the Supreme Cassation Prosecutor's Office, the Ministry of Finance and the Supreme Judicial Council. In a letter of 8

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

June 2000 the chief secretary of the Supreme Judicial Council informed the applicant that the processing of the payment had been delayed because the amount due was not a usual line item in the judiciary's budget and had to be specifically allotted to the Pleven Military Court.

14. In a further letter of 7 December 2000 the administration of the Supreme Judicial Council informed the applicant that on 29 November 2000 the chairperson of the Pleven Military Court had apprised the Council that the court lacked funding to pay the remainder of the debt towards the applicant and had requested an increase of its budget appropriation for 2001.

15. On 24 September 2003 the accountant of the Pleven Military Court paid the applicant the remainder of the judgment debt (BGN 5,262.01) and the applicant signed a declaration that he had received the amount and had no further claims against the court or the Supreme Judicial Council.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Compensation for unlawful imprisonment

16. Section 2 of the State Responsibility for Damage Act of 1988 (formerly „Закон за отговорността на държавата за вреди, причинени на граждани“, presently „Закон за отговорността на държавата и общините за вреди“), which sets out causes of action for tort claims against the investigation and prosecution authorities and the courts, provides, as relevant:

> “The State shall be liable for damage caused to [private persons] by the organs of ... the investigation, the prosecution, the courts ... for unlawful:
>
> ...
>
> 6. execution of a sentence above and beyond the specified period.”

B. Enforcement of judgment debts against state authorities

17. By paragraph 2 of Article 399 of the Code of Civil Procedure of 1952, a person who has an enforceable pecuniary claim (e.g. a judgment debt) against a state authority receives payment out of the funds earmarked for that purpose in the authority's budget.

18. The writ of execution evidencing the claim must be submitted to the authority's financial department. If there are no funds available in the authority's budget, the higher administrative authority has to ensure that funds become available in the budget for the following year.

19. Enforcement proceedings are not possible where the judgment debtor is a state authority. Until December 1997 paragraph 1 of Article 399 of the Code contained an express prohibition to that effect. Although this provision was repealed in December 1997, the legal framework remained unchanged, as paragraph 2 of Article 399 was not amended.

C. Partial payment and imputation of payment

20. Section 66 of the Obligations and Contracts Act of 1950 („Закон за задълженията и договорите“) provides that the creditor is not bound to accept partial payment even if the obligation is severable. Section 76(2) of that Act provides that when a payment by the debtor is not sufficient to extinguish the interest, the expenses and the principal of the debt, the money paid is imputed first to the expenses, then to the interest, and at the end to the principal. This rule is in the interest of the creditor (реш. № 748 от 24 април 2001 г. по гр.д. № 2504/2000 г., V г.о. на ВКС) and reflects the idea that he or she should not be deprived of an interest-bearing debt and remain only with the claim in respect of the interest (реш. № 6 от 6 януари 1956 г. по гр.д. № 7963/1955 г., I г.о. на ВС).

THE LAW

I. ADMISSIBILITY

21. The Government submitted that the applicant had ceased to be a victim of a violation, within the meaning of Article 34 of the Convention, as on 24 September 2003 he had received the entire amount which had been due to him under the judgment of the Pleven Regional Court. Unlike the situation obtaining in the case of *Burdov v. Russia* (no. 59498/00, ECHR 2002-III), this payment had taken place before notice of the application had been given to the Government. Moreover, the applicant had signed a declaration to the effect that he had no further claims in respect of the amount due to him.

22. The applicant did not express an opinion on the matter.

23. Article 34 of the Convention provides, as relevant:

> “The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto...”

24. According to the Court's case-law, a measure favourable to the applicant is not in principle sufficient to deprive him of his status as a

"victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Burdov*, cited above, § 31; *Timofeyev v. Russia*, no. 58263/00, § 36, 23 October 2003; and *Romashov v. Ukraine*, no. 67534/01, § 26, 27 July 2004).

25. It is true that on 24 September 2003 the applicant received the entirety of the judgment debt due to him by the authorities (see paragraph 15 above). However, this payment, while putting an end to the situation complained of, did not involve any acknowledgment of the violations alleged. In particular, the declaration signed by the applicant did not constitute such an acknowledgment, since it did not relate to the delay in the payment of the debt, but solely to the fact that no further amounts were due to him under the judgment of the Pleven Regional Court of 7 June 1999. No mention was made in the declaration of the grievances raised by the applicant before this Court. Nor did the payment afford the applicant adequate redress, as it did not remedy the failure of the authorities to comply with the final judgment in the applicant's favour for more than four years (see *Burdov*, § 31; *Timofeyev*, § 37; and *Romashov*, § 27, all cited above).

26. The applicant may therefore still claim to be a victim of a violation and his application is not inadmissible on that ground.

27. The Court further considers that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

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

28. The applicant complained that the authorities had failed to comply with the judgment in his favour. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention, which provides, 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."

29. The applicant submitted that the amount which he had been awarded for his unlawful detention had not only been unjust and very low, but had also remained unpaid for a considerable time.

30. The Government submitted that the applicant had failed to present the writ of execution to the appropriate authority – the Supreme Judicial Council – until mid-2000, and had instead addressed himself to various other bodies which had no competence in the matter. However, under Bulgarian law, the writ had to be presented to the financial department of the debtor authority. In view of the applicant's failure to do so in good time,

it was not surprising that no funds had been made available as early as November 2000. Finally, it had to be taken into account that the period in issue had been a time of reform in the judicial system and in the Supreme Judicial Council. Moreover, this period had not been one of high inflation.

31. The Court reiterates that the right of access to a court, enshrined in Article 6 § 1 of the Convention, would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. The execution of a final judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 § 1. The rule of law, one of the fundamental principles of a democratic society, is inherent in all Articles of the Convention and entails a duty on the part of the State and any public authority to comply with judicial orders or decisions against it (see *Burdov*, § 34; *Timofeyev*, § 40, and *Romashov*, § 42, all cited above; as well as *Prodan v. Moldova*, no. 49806/99, § 52, ECHR 2004-III (extracts)).

32. The Court notes that the Pleven Regional Court's judgment of 7 June 1999, which became final on 17 June 1999, remained unenforced until 24 September 2003, that is, for more than four years (see paragraphs 8 and 15 above). The Government stated that part of this delay – the period until November 2000 – was due to the fact that the applicant had not presented his writ of execution to the Supreme Judicial Council (see paragraph 30 above). However, the Court notes that under Article 399 § 2 of the Code of Civil Procedure of 1952, a judgment creditor claiming the payment of a judgment debt from a state authority has to present the writ of execution to the financial department of that authority, not its superior (see paragraph 18 above). In the case at hand the applicant addressed his claim to the Pleven Military Court on the day when he obtained the writ of execution – 17 June 1999. That court was the debtor authority and accordingly took steps to comply with its obligation, including informing the Supreme Judicial Council about the lack of funds in its budget (see paragraphs 8, 10, 12 and 14 above). The Court sees no reason why the applicant would have in addition been required to present his writ of execution to the Supreme Judicial Council to obtain the payment of the sum due. It follows that the delay between 17 June 1999 and November 2000 cannot be imputed to the applicant's behaviour. Nor does it seem that the issuing of a duplicate of the writ of execution (see paragraph 11 above) prevented the authorities from complying with their obligation to pay.

33. The Court further notes that while a part of the judgment debt towards the applicant – BGN 1,000 – was paid on 1 June 2000, i.e. less than a year after the judgment, the remainder was not settled until 24 September 2003, for no apparent reason other than the lack of funds in the Pleven Military Court's budget (see paragraphs 12-15 above). However, it is not open to a State authority to cite lack of funds as an excuse for not honouring a judgment debt (see *Burdov*, § 35; and *Prodan*, § 53, both cited above).

34. There has accordingly been a violation of Article 6 § 1 of the Convention.

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

35. The applicant further complained that the failure to execute the judgment in his favour had prevented him from using the sum due. The Court considers that this complaint falls to be examined under Article 1 of Protocol No. 1, which reads 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."

36. The parties relied on their submissions under Article 6 § 1 of the Convention.

37. According to the Court's case-law, a "claim" can constitute a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention if it is sufficiently established to be enforceable (see *Burdov*, § 40; and *Prodan*, § 59, both cited above).

38. The Pleven Regional Court's judgment of 7 June 1999, which became final on 17 June 1999, provided the applicant with an enforceable claim against the State. It follows that the applicant's impossibility to obtain the execution of this judgment in full before 24 September 2003 constituted an interference with his right to the peaceful enjoyment of his possessions, enshrined by the first sentence of the first paragraph of Article 1 of Protocol No. 1 (*ibid.*). By failing to comply for more than four years with the final judgment of the Pleven Regional Court, the national authorities prevented the applicant from receiving the money he could reasonably have expected to receive. The Government have not advanced any good reason for this and the Court considers that a lack of funds cannot justify such an omission.

39. There has therefore been a violation of Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed 14,130 euros (EUR) for the non-pecuniary damage suffered as a result of the failure of the authorities to comply with the judgment in his favour. He submitted that this omission had caused him anguish and distress.

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

43. The Court considers that the applicant must have been caused a certain amount of frustration as a result of the prolonged non-enforcement of the final judgment in his favour. It therefore awards him the amount of EUR 700, plus any tax that may be chargeable.

B. Costs and expenses

44. The applicant did not seek the reimbursement of any costs and expenses.

45. The Court sees no reason to make an award under this head of its own motion.

C. Default interest

46. 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 1 of Protocol No. 1;

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, EUR 700 (seven hundred euros) in respect of non-pecuniary damage, 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;

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

Done in English, and notified in writing on 10 May 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President