FOURTH SECTION

**CASE OF DIMITROVI v. BULGARIA**

*(Application no. 7443/06)*

JUDGMENT

STRASBOURG

4 December 2012

*This judgment is final but it may be subject to editorial revision.*

In the case of Dimitrovi v. Bulgaria,

The European Court of Human Rights (Fourth Section), sitting as a Committee composed of:

George Nicolaou, *President,* Zdravka Kalaydjieva, Vincent A. De Gaetano, *judges,*  
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 13 November 2012,

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

PROCEDURE

1.  The case originated in an application (no. 7443/06) 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 two Bulgarian nationals, Ms Lilyana Veselinova Dimitrova and Mr Yulian Dimitrov Dimitrov, on 9 February 2006.

2.  The applicants were represented before the Court by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3.  On 14 January 2011 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

4.  The applicants, Ms Lilyana Veselinova Dimitrova, born in 1952, and her son, Mr Yulian Dimitrov Dimitrov, born in 1983, live in Sofia.

5.  On 4 February 1998 their husband and father, Mr D.D., an aircraft maintenance technician, died in an air crash in Portugal.

6.  On an unknown date, not later than mid-1999, the applicants received an indemnity of 10,000,000 old Bulgarian levs (BGL) (the equivalent of 10,000 former German marks) under the liability insurance of Mr D.D.’s employer.

7.  On 10 December 1998 the applicants brought an action against Mr D.D.’s employer in connection with the occupational accident. They claimed a total of 200,000 new Bulgarian levs (BGN) (approximately 102,250 euros (EUR)) in non-pecuniary damages.

8.  The Sofia City Court conducted the first hearing on 21 June 1999. It ordered an expert report and postponed the hearing for the gathering of evidence. In the period from 24 January 2000 to 11 June 2001 it conducted five hearings, during which it questioned witnesses, admitted the expert report and a report from the Portuguese authorities which had investigated the air crash, and gathered other evidence.

9.  In a judgment of 30 August 2001 the Sofia City Court partly granted the applicant’s claim, awarding BGN 6,000 to the first applicant and BGN 7,500 to the second applicant, together with the statutory interest since the date of the air crash. It found, on the basis of the expert report and the report from the Portuguese authorities, that the accident had been due to a technical failure. However, certain acts and omissions of the crew, including Mr D.D., had partly contributed to the crash. The court qualified the behaviour of the crew as gross negligence and held that this called for a reduction of the compensation to be awarded to the applicants. The parties appealed.

10.  The Sofia Appeal Court conducted hearings on 12 April and 20 September 2002. In a judgment of 25 October 2002, which was rectified for errors by an additional judgment of 2 January 2003, it increased the award to BGN 13,000 for each applicant (EUR 13,300 in total). It ordered that the statutory interest should be paid as from the date of the incident until settlement. It held that Mr D.D.’s acts and omissions on the day of the accident could not be qualified as gross negligence and therefore no reduction of the compensation was justified. In assessing the amount of the non-pecuniary damages, the court took into account the insurance indemnity received by the applicants, the poor state of health of the first applicant and the fact that the second applicant had been underage at the time of the accident. The parties appealed on points of law.

11.  On 7 April 2003 the Supreme Court of Cassation suspended the enforcement of the judgment of the Sofia Appeal Court pending the outcome of the proceedings on points of law.

12.  On 31 May 2005 the Supreme Court of Cassation conducted a hearing. In a final judgment of 14 December 2005 it upheld the judgment of the Sofia Appeal Court.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

13.  The applicants complained under Articles 6 § 1 and 13 of the Convention that the length of the proceedings had been incompatible with the “reasonable time” requirement and that they had not had any effective domestic remedies in that respect.

Article 6 § 1 reads, in so far as relevant:

“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by a ... tribunal...”

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.”

14.  The period to be taken into consideration began on 10 December 1998 and ended on 14 December 2005. It thus lasted seven years and four days for three levels of jurisdiction.

A.  Admissibility

15.  The Government stated that the applicants had failed to exhaust the available domestic remedies because they had not made a complaint about delays.

16.  The Court considers that the question of exhaustion of domestic remedies is closely linked with the substance of the applicants’ complaint under Article 13 of the Convention. It should therefore be joined to the merits.

17.  The Court considers furthermore that the present complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and not inadmissible on any other grounds. They must therefore be declared admissible.

B.  Merits

18.  The Government stated that the length of the proceedings had not been unreasonable in view of the complexity of the case and the fact that the accident had taken place abroad, which involved communication with foreign authorities.

19.  The applicants disagreed.

20.  The Court reiterates that 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 applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). Special diligence is necessary in cases concerning alleged negligent acts that might have resulted in loss of life (see *Dodov v. Bulgaria*, no. 59548/00, § 109, 17 January 2008*.*

21.  The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Finger v. Bulgaria*, no. 37346/05, 10 May 2011).

22.  Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. It notes that the applicants were not responsible for any significant delays. The case was of some complexity as it involved an expert report and interaction with the Portuguese authorities. However, it took the Sofia City Court more than six months to schedule the first hearing, only to postpone it for another six‑month period for gathering of evidence (see paragraphs 7-8 above). Furthermore, the rectification of a technical error in the Sofia Appeal Court’s judgment and the proceedings before the Supreme Court of Cassation took more than three years (see paragraphs 10-12 above). The Court notes that the applicants, as heirs of a victim of an occupational accident, had an important personal interest in securing a judicial decision on their entitlement to compensation promptly. Thus, in view of what was at stake in the proceedings, their overall length of seven years appears excessive.

23.  As regards the existence of effective remedies capable of preventing the violation of Article 6 § 1 or its continuation, or providing adequate redress, the Court has already held that a complaint about delays is not an effective remedy in cases, such as the present one, where considerable delays occur before the highest court (see *Finger*, cited above, § 87) or where the major source of delay is not the courts’ failure to schedule hearings at reasonable intervals but rather the fact that they did not organise the examination of the case properly and failed to gather evidence in a more efficient manner (ibid., § 88). Furthermore, under the Bulgarian law there are no compensatory remedies for length of civil proceedings (ibid., § 89).

24.  Against this background, the Court finds that the Government’s preliminary objection about non-exhaustion of domestic remedies must be dismissed and concludes that there has been a violation of Articles 6 § 1 and 13 of the Convention.

II.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

25.  The applicants also complained under Article 1 of Protocol No. 1 and Articles 2, 6 and 13 of the Convention that the compensation awarded by the national courts in connection with the death of their husband and father had been too low and that they had not had effective domestic remedies in this respect.

26.  The Court has examined the remainder of the applicants’ complaints as submitted by them. However, 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.

27.  It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

28.  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

29.  The applicants claimed 14,000 euros (EUR) in respect of non‑pecuniary damage stemming from the unreasonable length of the proceedings and the lack of effective remedies in that respect.

30.  The Government contested this claim as excessive.

31.  The Court considers that the applicants must have sustained non‑pecuniary damage as a result of the breaches of their rights found in the case. Taking into account all the circumstances of the case, and deciding on an equitable basis, it awards each applicant EUR 1,700 under this head.

B.  Costs and expenses

32.  The applicants sought reimbursement of EUR 600 incurred in lawyers’ fees for work on the proceedings before the Court. They further claimed EUR 168,07 for other expenses, such as translation, postage and office expenses. They submitted a receipt signed by them and their legal representatives showing that they had paid EUR 600 in lawyers’ fees in connection with the proceedings before the Court, a contract for translation services for the amount of EUR 87,43, and postage receipts. They requested that EUR 600 of any award made under this head be paid directly to them (since they had already paid that sum to their lawyers) and the remainder to their lawyers, Mr M. Ekimdzhiev and Ms K. Boncheva.

33.  The Government contested these claims as excessive.

34.  According to the Court’s case-law, costs and expenses claimed under Article 41 must have been actually and necessarily incurred and reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, the Court considers it reasonable to award the applicants the sum of EUR 600 in respect of lawyers’ fees, plus any tax that may be chargeable to them.

35.  As for the claim for other expenses, the Court observes that the applicants have provided supporting documents only for the sum paid for translation services (EUR 87,43). It therefore awards them that amount, plus any tax that may be chargeable to them. It is to be paid into the bank account of the applicants’ legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva.

C.  Default interest rate

36.  The Court considers it appropriate that the default interest rate 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. *Decides* to join to the merits the Government’s objection concerning the exhaustion of domestic remedies in respect of the complaints concerning the length of the proceedings and the availability of an effective remedy in that respect, and rejects this objection after having examined the merits;

2.  *Declares* the complaints concerning the excessive length of the proceedings and the alleged lack of effective remedies in that respect admissible and the remainder of the application inadmissible;

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

4.  *Holds* that there has been a violation of Article 13 of the Convention;

5.  *Holds*

(a)  that the respondent State is to pay the applicants, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i)  to Mr Dimitrova, EUR 1,700 (one thousand seven hundred euros), plus any tax that may be chargeable, in respect of non‑pecuniary damage;

(ii)  to Mr Dimitrov, EUR 1,700 (one thousand seven hundred euros), plus any tax that may be chargeable, in respect of non‑pecuniary damage;

(iii)  jointly to the applicants, EUR 687.43 (six hundred and eighty‑seven euros and forty-three cents), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, EUR 600 of which is to be paid to the applicants themselves, and the remainder is to be paid into the bank account of the applicants’ legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva;

(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 applicants’ claim for just satisfaction.

Done in English, and notified in writing on 4 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı George Nicolaou  
 Deputy Registrar President