FOURTH SECTION

**CASE OF MILEN KOSTOV v. BULGARIA**

*(Application no. 40026/07)*

JUDGMENT

STRASBOURG

3 September 2013

FINAL

03/12/2013

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Milen Kostov v. Bulgaria,

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

Ineta Ziemele, President,

David Thór Björgvinsson,

Päivi Hirvelä,

George Nicolaou,

Zdravka Kalaydjieva,

Vincent A. De Gaetano,

Krzysztof Wojtyczek, *judges,*

and Françoise Elens-Passos, *Section Registrar,*

Having deliberated in private on 9 July 2013,

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

PROCEDURE

1.  The case originated in an application (no. 40026/07) 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 a Bulgarian and Greek national, Mr Milen Dimitrov Kostov (“the applicant”), on 20 August 2007.

2.  The applicant was represented by Mr M. Ekimdzhiev and Mrs K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3.  On 11 May 2011 the application was communicated to the Government. On 17 May 2011, the Greek Government was informed of their right to intervene in the proceedings in accordance with Article 36 § 1 of the Convention and Rule 44 § 1 of the Rules of Court. They chose not to avail themselves of this right.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

4.  The applicant was born in 1966 and lives in Varna.

5.  On 30 September 2005, relying on section 76 § 2 of the Bulgarian Identity Papers Act of 1998, the Varna Regional Police Directorate (“the VRPD”) issued an order refusing to issue the applicant with an international passport and ordering that his existing passport be seized. The order was issued on the grounds that the applicant had been previously convicted and the statutory period for legal rehabilitation had not yet expired.

6.  At the time when the order was issued, the applicant was apparently living in Germany. He travelled to Bulgaria in early April 2006 to renew his identity papers. When he applied for his papers on 25 April 2006, the authorities informed him of the order of 30 September 2005 and refused to issue a new passport to him.

7.  The applicant appealed against the order arguing that it contained no reasons to justify the imposition of the ban.

8.  In a judgment of 2 August 2006 the Varna Regional Court quashed the order and remitted the case to the VRPD. The court established that the applicant had been released in November 2003 after serving a two-year prison sentence. It then observed that the appropriateness of the imposed administrative measure was not subject to judicial control. However, the court found that the order was deficient as the relevant circumstances had not been examined. In particular, the VRPD had not commented on the applicant’s numerous trips from and back to Bulgaria following his release, on his Greek citizenship and on his permanent residence permit and address in Germany. All of those factors could have pointed against the imposition of the ban. The Varna Regional Court concluded that the order was not sufficiently reasoned.

9.  Upon appeal, in a final judgment of 22 February 2007, the Supreme Administrative Court (“the SAC”) set aside the lower court’s judgment and confirmed the order. The SAC held that the order was reasoned in so far as it made a reference to the statutory provisions on the basis of which it had been issued. It also held that the personal circumstances of the applicant should not have been examined by the lower court as the VRPD’s discretion in issuing the order was not subject to judicial control.

10.  On 2 May 2007 the applicant requested that the travel ban be lifted because he had been rehabilitated. The VRPD lifted the ban in an order of 11 May 2007 on the grounds of the applicant’s rehabilitation.

II.  RELEVANT DOMESTIC LAW AND PRACTICE

11.  The relevant domestic law concerning travel bans on convicted individuals pending their rehabilitation is set out in the Court’s judgment in the case of *Nalbantski v. Bulgaria* (no. 30943/04, §§ 25‑29, 10 February 2011).

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 2 OF PROTOCOL No. 4 TO THE CONVENTION

12.  The applicant complained that the restriction of 30 September 2005 on his freedom to leave Bulgaria was not necessary and proportionate, contrary to Article 2 of Protocol No. 4 to the Convention.

The relevant part of Article 2 of Protocol No. 4 reads as follows:

“.....2.  Everyone shall be free to leave any country, including his own.

3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others....”

A.  Admissibility

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

B.  Merits

1.  The parties’ submissions

14.  In the Government’s view, the travel ban had been imposed on the basis of a thorough assessment of all relevant factors, namely a prior criminal conviction and the absence of rehabilitation of the applicant. The ban had been issued by the competent authorities and in accordance with the law, as well as for the purposes of national security, the protection of the rights of others and the prevention of crime. Given that the applicant had been convicted and not rehabilitated, the ban had been proportionate and justified. Finally, the ban’s effects vis-à-vis the applicant had only lasted just over a year: between 25 April 2006, when the ban had been served on him, and 11 May 2007, when it had been lifted.

15.  The applicant maintained his claim. In particular, he pointed out that, in the judicial review proceedings in which he had challenged the ban, the domestic courts had not reviewed the assessment of the police as to whether it had been necessary to ban him from leaving the country.

2.  The Court’s assessment

16.  The Court finds that the present case concerns a travel ban imposed on a convicted and not yet rehabilitated offender. The Court also notes that the parties do not contest that the applicant was unable to leave the country as a result of the ban. The case is almost identical to *Nalbantski* (cited above), as well as to the more recent cases of *Sarkizov and Others v. Bulgaria* (nos. 37981/06 et al., §§ 66‑70, 17 April 2012) and *Dimitar Ivanov v. Bulgaria* ([Committee], no. 19418/07, §§ 36‑38, 14 February 2012), in all of which the Court found breaches of Article 2 of Protocol No. 4.

17.  In the instant case, as in the ones mentioned above, in deciding to impose a travel ban, the authorities referred only to the applicant’s conviction and his lack of rehabilitation. At the same time they failed to take into consideration his individual situation or to assess the proportionality of the measure (see *Nalbantski*, cited above, § 66). That situation could not be rectified through judicial review proceedings. The reason for that was the courts’ finding that they could not review the manner in which the police authorities had exercised their discretion in assessing the necessity of imposing the ban (see paragraph 9 above). Such a rigid and automatic approach cannot be reconciled with the obligation imposed by Article 2 of Protocol No. 4 to ensure that any interference with an individual’s right to leave his or her country is, from the outset and throughout its duration, justified and proportionate in the light of the circumstances (see *Nalbantski, Sarkizov and Others* and *Dimitar Ivanov,* all cited above).

There has accordingly been a violation of Article 2 of Protocol No. 4 of the Convention.

II.  ALLEGED VIOLATION OF ARTICLE 13 IN CONJUNCTION WITH ARTICLE 2 OF PROTOCOL NO. 4 TO THE CONVENTION

18.  The applicant complained that he had not had an effective domestic remedy in relation to his complaint under Article 2 of Protocol No. 4. He relied on Article 13 of the Convention.

Article 13 of the Convention provides:

“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.”

19.  The Government did not submit any comments.

20.  The Court notes that where there is an arguable claim that an act of the authorities may infringe the individual’s right to leave his or her country, guaranteed by Article 2 of Protocol No. 4 to the Convention, Article 13 of the Convention requires the national legal system to make available to the individual concerned the effective possibility of challenging the measure complained of and of having the relevant issues examined with sufficient procedural safeguards and thoroughness by an appropriate domestic forum offering adequate guarantees of independence and impartiality (see, *mutatis mutandis*, *Al-Nashif v. Bulgaria*, no. 50963/99, § 133, 20 June 2002; *Riener v. Bulgaria*, no. 46343/99, § 138, 23 May 2006).

21.  There is no doubt that the applicant’s complaint under Article 2 of Protocol No. 4 to the Convention in respect of the prohibition for him to leave Bulgaria was arguable. He was entitled, therefore, to an effective complaints procedure in Bulgarian law.

22.  Bulgarian law provided for a possibility to seek judicial review of an order imposing a prohibition to leave the country. The applicant’s appeals against the travel ban were examined by the courts, which gave reasoned decisions.

23.  However, in its analysis the SAC was only concerned with the formal lawfulness of the ban. Once satisfied that the applicant had indeed been convicted and not rehabilitated, the SAC automatically confirmed the travel ban, quashing the lower court’s finding that the ban had not been sufficiently reasoned. Questions such as the applicant’s numerous trips from and to Bulgaria following his release, his Greek citizenship, his permanent residence permit and address in Germany were not considered. The applicant’s right to respect for his private and family life was also held to be irrelevant, and no attempt was made to assess whether the restrictions on the applicant’s leaving the country were a proportionate measure, namely whether they struck a fair balance between the public interest and the applicant’s rights (see paragraph 9 above).

24.  The Court has already held that a domestic appeals procedure cannot be considered effective within the meaning of Article 13 of the Convention, unless it affords a possibility to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief. Giving direct expression to the States’ obligation to protect human rights first and foremost within their own legal system, Article 13 establishes an additional guarantee for an individual in order to ensure that he or she effectively enjoys those rights (see *Kudła v. Poland [GC]*, no. [30210/96](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"appno":["30210/96"]}), ECHR 2000‑XI, § 152; *T.P. and K.M. v. the United Kingdom [GC],* no. [28945/95](http://hudoc.echr.coe.int/sites/eng/Pages/search.aspx#{"appno":["28945/95"]}), ECHR 2001-V, § 107; *Riener* cited above).

25.  The limited scope of review in the applicant’s case, resulting from the SAC’s application of Bulgarian law at the time of the events, did not satisfy the requirements of Article 13 of the Convention in conjunction with Article 2 of Protocol No. 4. The applicant did not have any other effective remedy in Bulgarian law.

It follows that there has been a violation of Article 13 of the Convention, in conjunction with Article 2 of Protocol No. 4.

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

26.  The applicant further complained that he was denied access to a court in that the SAC refused to examine the proportionality of the imposed restriction on his travel. He relied on Article 6 § 1 of the Convention.

27.  The Court notes that this complaint is linked to the ones examined above and must, therefore, be declared admissible.

28.  Having regard to its findings related to Article 2 of Protocol No. 4 and to Article 13 of the Convention (see paragraphs 17 and 25 above), the Court considers that, in the circumstances of the present case, no separate issue arises under Article 6 § 1.

IV.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

29.  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

30.  The applicant claimed 15,000 euros (EUR) in respect of non‑pecuniary damage stemming from a violation of Article 2 of Protocol No. 4 and also EUR 5,000 in respect of non-pecuniary damage as a result of a breach of Article 13.

31.  The Government contested these claims as unfounded, not proven and exorbitant.

32.  The Court considers that the applicant must have sustained non‑pecuniary damage as a result of the breaches of the Convention in his case. Taking into account the particular circumstances and the awards made in similar cases, and ruling on an equitable basis as required under Article 41, the Court awards the applicant EUR 2,000 in respect of non‑pecuniary damage plus any tax that may be chargeable.

B.  Costs and expenses

33.  The applicant also claimed EUR 1,995 for the legal work carried out by his representatives in the proceedings before the Court and EUR 185.65 for other expenses, such as postal and clerical costs. He requested that EUR 511.29 of the lawyers’ fees be made payable to him, and the remaining EUR 1,483.71 to his legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva. He requested that EUR 39 from the other expenses be paid directly to his lawyers indicated above and EUR 146.65 be paid into the account of “Legal Offices of Ekimdzhiev, Boncheva and Chernicherska” for the translation services provided. He submitted a fee agreement with his lawyers, a time sheet and a contract for translation services.

34.  The Government disputed the hourly rate charged by the applicant’s lawyers. They also stated that postal and translation expenses should be allowed only in so far as they were supported by documents.

35.  According to the Court’s case-law, costs and expenses will not be awarded under Article 41, unless it is established that they were actually and necessarily incurred and reasonable as to quantum. In the present case, having regard to the documents in its possession and the above criteria, the Court considers it appropriate to award EUR 1,000 in respect of the legal fees incurred by the applicant, payable as follows: EUR 511.29 to the applicant and EUR 488.71 to the applicant’s legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva. As regards the other expenses, having regard to the documents in its possession, the Court considers it appropriate to award the applicant EUR 146.65 under this head, payable into the account of “Legal Offices of Ekimdzhiev, Boncheva and Chernicherska”. To all of those amounts is to be added any tax that may be chargeable to the applicant.

C.  Default interest

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.  *Declares* the application admissible;

2.  *Holds* that there has been a violation of Article 2 of Protocol No. 4 to the Convention;

3.  *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 2 of Protocol No. 4;

4.  Holds that no separate issue arises under Article 6 § 1 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 at the date of settlement:

(i)  EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii)  EUR 1,146.65 (one thousand one hundred and forty-six euros, and sixty-five cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, payable as follows: EUR 511.29 (five hundred and eleven euros, and twenty-nine cents) to the applicant himself; EUR 488.71 (four hundred and eighty‑eight euros, and seventy-one cents) to the applicant’s legal representatives, Mr M. Ekimdzhiev and Ms K. Boncheva; and EUR 146.65 (one hundred and forty-six euros, and sixty-five cents) into the account of “Legal Offices of Ekimdzhiev, Boncheva and Chernicherska”;

(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 3 September 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos Ineta Ziemele  
 Registrar President