

Anguelova v Bulgaria (Application no. 38361/97)

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of Decision: 13 June 2002

Link to full case:

<http://cmiskp.echr.co.int/tkp197/view.asp?action=html&documentId=698382&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACCBCD1763D4D8149>

2) Facts

The applicant, Mrs Assya Anguelova, a Bulgarian national, alleged that her son had been the victim of violations of the European Convention on Human Rights. On 29 January 1996, her son, Anguel Zabchekov, aged 17, who had been known to the police as a suspect on theft charges, died after having spent several hours in police custody in Razgrad following his arrest for attempted theft. Though it was normal procedure, no written order for his detention was issued upon his arrival at the police station at 12.50 a.m.

He was left in the hallway to sober up. A police sergeant noticed he was shivering and moved him to a warmer room. Later on that evening, at 3.50 a.m. the sergeant noticed his condition had deteriorated. A doctor was brought from the nearby hospital, who advised that he should be taken to the hospital and examined by the doctor on duty. The doctors declared him dead as a result of a skull fracture, claiming that it can take typically around four hours for a person to die from such an injury. The ensuing investigations conducted by the prosecution authorities ended with the conclusion that the death must have been caused by an accidental injury which pre-dated Mr Zabchekov's arrest, following a second medical report claiming that such injuries can take up to 12 hours to result in death. The applicant contested the investigation's conclusion. The applicant alleged her son had died as a result of ill-treatment by the police, that the authorities had failed to carry out an effective investigation, and that her son had been discriminated against by the authorities because he was of Roma origin.

3) Law

International Law

- The European Convention on Human Rights
 - Article 2 (right to life)
 - Article 3 (freedom from torture and inhuman or degrading treatment of punishment)
 - Article 5 (right to liberty and security)
 - Article 13 (right to an effective remedy)
 - Article 14 (prohibition of discrimination) in conjunction with Articles 2, 3 and 13 of the Convention

4) Legal Arguments

The Applicant

The applicant alleged that by failing to provide timely medical treatment and in failing to carry out an effective investigation into his death, the State violated Article 2. The applicant also claimed that the authorities had mistreated her son prior to his death in violation of Article 3. She argued that the failure to properly investigate his death also amounted to a violation of Article 13 by depriving her of an effective remedy, and claimed that the initial arrest of her son was a violation of his right to liberty and security as no official order of detention was issued upon his arrest and transferral to the police station. She also alleged that Article 14 has been violated, highlighting the way in which the police officers referred to Mr Zabchekov as “the Gypsy”, even in their official statements, and drawing attention to the systematic racism of law enforcement bodies in Bulgaria in order to substantiate her claim that her son’s Roma origins influenced the actions of the police officers and investigation authorities.

The State

The State argued that there was no concrete evidence of any racially motivated act on the part of the authorities, insisting that the fact that some statements referred to Mr Zabchekov as “the Gypsy” was not sufficient evidence. It also argued that the injuries which caused Mr Zabchekov’s death were sustained before he came into police custody, and that his detention was not unlawful and therefore not a violation of Article 5.

5) Decision

The Court unanimously found violations of Articles 2, 3 and 5 on the basis that the explanation for Mr Zabchekov’s death offered by the State was implausible, the injuries he sustained were at the hands of the Bulgarian authorities, the delay in provision of medical care contributed significantly to the fatal outcome of the case and the authorities had failed to carry out an effective investigation into his death. Though accepting that the police officers had acted in a suspicious manner which undermined the credibility of their testimonies, the Court emphasised that the standard of proof in such decisions is “beyond reasonable doubt” and, as in *Velikova v Bulgaria*, the evidence did not allow it to conclude beyond a reasonable doubt the presence of racially motivated prejudice. Therefore, the Court found by six voted to one that there had been no violation of Article 14. The Court awarded the applicant EUR 19,050 in non-pecuniary damages and EUR 3,500 in costs and expenses.

Dissenting Opinion

In a strongly worded dissenting opinion, Judge Bonello argued that the Court should have found a violation of Article 14. He highlighted that the Court has never found a violation of Article 14 in conjunction with Articles 2 or 3, despite the fact that the Court frequently acknowledged that members of vulnerable minorities are deprived of life or subjected to appalling treatment. He identified the evidentiary rule of “proof beyond reasonable doubt” as the primary barrier to inability to find a violation of Article 14 and suggested that the burden of proof ought to be shifted to the defendant. He also recalled the reports of numerous NGOs and cases to demonstrate a history of racially aggravated attacks on and discrimination against Roma groups in Bulgaria.