

Velikova v. Bulgaria (Application No. 41488/98)

From DADEL

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of decision: 18 May 2000

Link to full case:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=696708&portal=hbk&source=externalbydocnumber&table=1132746FF1FE2A468ACCBBCD1763D4D8149>

2) Facts

The applicant, Ms. Anya Velikova, a Bulgarian national, alleged: that Mr. Tsonchev, her partner of twelve years, had died in police custody as a result of police violence; that the investigation into his death was ineffective; that she was unable to have determined her civil right to compensation, and there were no effective remedies in this respect; and that Tsonchev was discriminated against on the basis of his Roma ethnic origin. The allegation claimed that these actions violated Articles 2, 6, 13 and 14 of the Convention.

Mr. Tsonchev was taken into police custody on 24 September 1994 on suspicion of cattle theft. He had consumed alcohol prior to his arrest but was in good physical health, with no ailments or visible injuries. Police officers testified that he was too drunk to be questioned at the time of his arrest and locked him in a cell, after which a detention order was issued. Police testimony stated that Tsonchev said he was feeling unwell. The physician called to the station at that time testified that Tsonchev was too drunk to be examined. Police testimony then states that, after vomiting in his cell, Tsonchev was left in the hallway where he fell on the floor. At 2 a.m. on 25 September 1994, the same physician arrived again at the station and found Tsonchev dead. A forensic expert carried out a post-mortem examination and found the cause of death to be an acute loss of blood resulting from large and deep haematomas on the upper limbs and the buttocks. A police note was issued in October 1994 and a chemical analysis in December 1994, but no further investigative activity followed. There were numerous appeals and requests for further information and investigation from the applicant and her counsel between December 1994 and December 1997, but no further action was taken, despite an order from the Chief Public Prosecutor's Office to reopen the investigation.

3) Admissibility

The Application was found admissible.

4) Merits

The Court found the Government to have violated Article 2 of the Convention. In cases of deaths in police custody, where the individual in question was in good health prior to arrest, the burden of proof is on the authorities to provide a plausible explanation for the death. In this case the Government did not provide such an explanation. Sufficient evidence that Tsonchev died as a direct result of injuries inflicted while in police custody places responsibility on the Government.

The Court also found that the investigation, although begun promptly after Tsonchev's death, was ineffective and contained numerous unexplained omissions. This was a further violation of Article 2, which implies an obligation of effective official investigation into deaths in police custody that is thorough, impartial, and careful.

The Court upheld the allegation of the Government's violation of Article 13. The applicant argued that there was no effective remedy under Bulgarian law against the failure of the authorities to carry out an effective investigation. The Court articulated that the remedy guaranteed by Article 13 must be effective in practice as well as in law, and that the Government had failed in its obligation to provide an effective investigation into Tsonchev's death and therefore undermined the effectiveness of other remedies which may have been available to the applicant.

The Court did not find sufficient evidence to uphold the applicant's allegation of racial discrimination in violation of Article 14. The applicant argued that the widespread discrimination by the authorities against people of Roma origin in Bulgaria has been documented by a number of human rights monitoring organizations. She also cited numerous reports by intergovernmental and non-governmental organizations to that same effect. The Court acknowledged the gravity of the applicant's arguments. However, the standard of proof required by the Convention is "proof beyond reasonable doubt." In this case, there was not evidence sufficient to enable the Court to conclude beyond a reasonable doubt that Tsonchev's death and the lack of effective investigation were motivated by discrimination on the basis of race.

5) Decision

The Court unanimously held:

1. That there was a violation of Article 2 with respect to Tsonchev's death and with respect to the State's obligation to conduct an effective investigation.
2. That there was a violation of Article 13; and that there was no violation of Article 14.
3. The Court awarded the applicant: 100,000 French francs in non-pecuniary damages; 8,000 Bulgarian leva in pecuniary damages; and costs and expenses.