

Paraskeva Todorova vs. Bulgaria (Application no. 37193/07)

1) Reference Details

Jurisdiction: European Court of Human Rights

Date of Decision: 25 March 2009

Case Status: Concluded

Link to full case (in French only):

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=37193/07%20|%2037193/07&sessionid=50355116&skin=hudoc-en>

2) Facts

The applicant, Paraskeva Todorova, is a Bulgarian national of Roma origin who was born in 1952. In 2005 she was charged with appropriation by fraud of money and jewelry. The prosecution in her case recommended that Ms Todorova be given a suspended sentence due to several extenuating circumstances including her health condition.

In May 2006, the Plovdiv District Court convicted the applicant and sentenced her to 3 years' imprisonment. In the judgment, making reference to Ms Todorova's Roma origin, the District Court refused to suspend her sentence stating that there was an impression of impunity, especially among members of minority groups, "for whom a suspended sentence is not a sentence". The District court's decision was upheld by the Plovdiv Regional Court, in October 2009, which "fully subscribed" to the refusal to suspend the sentence.

In June 2007 the Supreme Court of Cassation confirmed the sentence and refused to order a re-examination or a possibility to modify the sentence. Although this court recognized that the applicant fulfilled the conditions to benefit from a suspended sentence, it considered the imprisonment sentence was justified in order to discourage a sense of impunity, particularly among ethnic minority groups.

On 9 August 2007, the applicant submitted her claim before the European Court of Human Rights (ECtHR). She complained that the Bulgarian courts had discriminated against her on the ground of her ethnicity by condemning her to an imprisonment sentence when due to her health status and other factors, the prosecution had recommended a suspended sentence.

3) Law

European Convention on Human Rights

Article 6 (1) (right to a fair trial within reasonable time)

Article 14 (right to non-discrimination)

National Law

Article 6 (2) of the Bulgarian Constitution (right to equality before the law and to non-discrimination)

Article 11 (2) of the Criminal Procedure Act of 2006 (Obligation for the courts to apply uniformly the law to all citizens)

4) Legal Arguments

The Applicant

The applicant alleged that the Bulgarian courts' refusal to grant a suspended sentence was based on her belonging to the Roma minority. She argued that she fulfilled all the conditions to benefit from a suspended sentence under the law and that the courts only handed down a custodial sentence because she was a member of a minority group. She added that in the same circumstances a member of the majority ethnic group would not have been handed a custodial sentence.

She argued that this approach adopted by the courts infringed her right to a fair trial. In particular, the District Court's refusal to grant a suspended sentence, on grounds that it would encourage a feeling of impunity, especially among members of minority groups "for whom a suspended sentence is not a sentence", clearly demonstrates the lack of judicial impartiality.

It was also argued that there is no appeal system in Bulgarian national law allowing a legal challenge in this situation. She concluded that the Bulgarian courts acted in breach of Article 14 taken in conjunction with Article 6(1) of the Convention.

The Government

The Government claimed that the applicant was not discriminated against on the ground of her ethnicity. It was argued that under national law sentencing has a dissuasive aim designed to discourage other members of society from committing criminal offenses and prevent the convicted person from reoffending. Consequently, both deterrent aspects of the sentence had to be taken into account by the courts.

The Government asserted that the courts correctly applied national law considering that the District Court judgment only outlined that a suspended sentence would have provoked a feeling of impunity among all members of society, without distinguishing between minority groups.

Finally, the Government put forward that the ethnicity of the applicant only played an insignificant part in the sentence.

5) Decision

The ECtHR recalled that its previous jurisprudence has held that that if a difference of treatment, by a national court, is based solely on the ground of ethnicity then the defendant Government has to justify this different treatment. If the Government fails to justify the difference, Articles 14 of the Convention is infringed.

On the facts of this case the ECtHR held that the applicant had been subjected to a different treatment. This was clear from the outset through the District Court's reference to the applicant's ethnic origin. The ECtHR pointed out that the District Court's comment concerning the impression of impunity, implying both minority groups and the applicant, together with the

applicant's ethnicity, presented the presumption that the District Court aimed to impose a sentence that would serve as an example to the Roma community.

The ECtHR held that the fact that the applicant had been subjected to different treatment was also corroborated by the silence of the District Court on her health condition, a main reason for the request of the suspended sentence, and by the silence of the two higher courts in respect to the alleged discrimination. It noted that the Bulgarian authorities did not attempt to justify the different treatment and only argued that such treatment had not taken place.

Adding that the right to equality before the law is enshrined by the Bulgarian Constitution and that the Criminal Act of 2006 provides an obligation for Bulgarian courts to apply the criminal law uniformly to all citizens, the ECtHR observed that the judicial practice in this case failed to comply with these legal principles.

As a result, the ECtHR held that the actions of the Bulgarian courts had led to an unjustified different treatment on the ground of ethnicity and violated Article 14 taken in conjunction with Article 6 (1) of the Convention.