



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 29 January 2014

FOURTH SECTION

Application no. 50705/11
Valeri Iliev TODOROV and others
against Bulgaria
lodged on 2 August 2011

STATEMENT OF FACTS

The first and second applicants, Mr Valeri Iliev Todorov and Ms Vera Ilieva Todorova, are husband and wife and are Bulgarian nationals, who were born in 1972 and 1969 respectively and live in Vratsa. The third and fourth applicants, Mr Iliya Ivanov Todorov and Ms Galya Tsvetanova Ivanova, are also Bulgarian nationals born in 1950 and 1953 respectively and live in Ruska Bela and Vratsa. They are the first applicant's parents. All applicants are represented before the Court by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows.

1. The criminal proceedings against the first applicant

In a judgment of the Pleven Regional Court of 20 October 2002, which became final on 1 December 2004, the first applicant was found guilty of depriving a third party of liberty in the period between 5 September 1993 and 9 September 1993. In the same proceedings he was also found guilty of attempted extortion which could have caused the victim a pecuniary damage amounting to 800 000 old Bulgarian levs¹.

2. The proceedings under the Forfeiture of Proceeds Crime Act 2005

On 18 October 2006 the Commission for Uncovering Proceeds of Crime (see below, Relevant domestic law) started an inquiry against the first

¹ On 5 July 1999 the Bulgarian lev was denominated. One new Bulgarian lev ("BGN") equals 1,000 old Bulgarian levs ("BGL").

applicant. Referring to information about the assets acquired and disposed of by all applicants between 1 January 1993 and 31 December 2005, on 11 January 2007 the Commission applied to the Vratsa Regional Court for an order freezing a number of assets, including real properties and bank accounts. On the same day the Vratsa Regional Court examined the application and allowed it.

On 19 July 2007 the Commission filed an application to the Vratsa Regional Court requesting that all of the first two applicants' assets be forfeited with the exception of their family home. The Commission argued that the first and the second applicants' legitimate income during the relevant period (1 January 1993 - 31 December 2005) had been 7,416 minimum monthly salaries and their expenditure during the same period – 11,506 minimum monthly salaries. It reasoned that all the prerequisites for forfeiture under the 2005 Act were in place. Firstly, the first applicant had been found guilty of a crime which fell within the scope of the 2005 Act. Secondly, he had acquired assets of considerable value for which legitimate source of income could not be established. The Commission then went on to enumerate the assets that it proposed for forfeiture: nine real properties, part of which were common matrimonial property, deposits in bank accounts, the income from the sale of apartments, cars and company shares and from rent received from a number of real properties and in addition two plots of land and a house built on one of them, which the applicant had transferred to the third applicant in 2003. The total value of all assets proposed for forfeiture amounted to BGN 1 851 317.

In a judgment of 1 April 2009 the Vratsa Regional Court partly allowed the Commission's request and ordered that a number of assets of the first two applicants be forfeited. The court did not allow the forfeiture of the plot of land and house built on it which in 2003 was transferred from the first applicant to the third applicant as it found that the house served as home for the third and fourth applicants. In the course of the proceedings the Regional Court admitted a number of expert reports, heard testimonies from witnesses, and admitted as evidence a large number of documents, such as contracts, declarations and loan agreements. The Regional Court thus established that for the relevant period the applicants had received income amounting to 8,358 minimum monthly salaries and their expenditure during the same period had been 11,502 minimum monthly salaries. The Regional Court then went on to state that for a forfeiture claim to be allowed three conditions should be met: 1) the person should have been found guilty of a crime enumerated under section 3 (1) of the 2005 Act; 2) the person should have acquired assets of considerable value and that 3) no legitimate source for the acquired assets should have been established. The court went on to say that if the legality of the sources of income had not been established, which it found to be the case for most of the applicants' assets, it was to be presumed that the assets were the proceeds of crime and therefore it dismissed the applicants' objection that it was impossible to make an assumption about the direct or indirect acquisition of the assets from criminal activity because there was no link between the offence committed by the first applicant and the acquired assets. The applicants and the Commission appealed.

In a judgment of 3 August 2010 the Sofia Court of Appeal upheld the lower court's judgment and in addition ordered that an extra plot of land be forfeited. In reaching its conclusion, the Court of Appeal first relied on paragraph 5 (2) of the transitional and concluding provisions of the 2005 Act and concluded that the Act applied retrospectively to situations where the person had been sentenced up to five years prior to the entry into force of the 2005 Act, which was so in the case of the first applicant. As to the applicants' argument that there was no link between the committed offence and the acquired assets, the court dismissed it finding that it was not necessary to establish such a link because all that was required under the law to trigger the reasonable assumption that the assets were proceeds of crime was to establish that the assets in question had no legitimate source.

In a decision of 12 May 2011 the Supreme Court of Cassation declared the Commission's appeal admissible on the ground that the case raised an issue that had been adjudicated by the lower courts contrary to the settled practice of the SCC – namely whether forfeiture under the 2005 Act was applicable in respect of plot of land and the house standing on it which had been transferred during the relevant period from the first applicant to his parents and which was their only home. In a final judgment of 3 January 2012 the Supreme Court of Cassation ordered the forfeiture of the property, finding that because the third and the fourth applicants were not parties to the proceedings, evidence had not been gathered to show that the house in question was their only home and that in any event third parties like the third and the fourth applicants were not subject to the general protection provided for by Bulgarian law in what concerns the taking away of their only home. The court concluded that the house in question had to be forfeited as under section 8 of the 2005 Act it was presumed that the third and the fourth applicants had known that it was acquired with income originating from criminal activity.

B. Relevant domestic law and practice

An overview of the pertinent legislation, applicable at the relevant time, can be found in the Court's decision in the case of *Nedyalkov and Others v. Bulgaria* (no. 663/11, §§ 33-68, 10 September 2013).

C. Relevant international instruments

1. Council of Europe texts

The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS No. 141) came into force in respect of Bulgaria on 1 October 1993. Its relevant provisions read as follows:

Article 3 – Investigative and provisional measures

“Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify and trace property which is liable to confiscation pursuant to Article 2, paragraph 1, and to prevent any dealing in, transfer or disposal of such property.”

Article 5 – Legal remedies

“Each Party shall adopt such legislative and other measures as may be necessary to ensure that interested parties affected by measures under Articles 2 and 3 shall have effective legal remedies in order to preserve their rights.”

2. *European Union law*

Article 2 of the Framework Decision of the Council of the European Union of 24 February 2005 on Confiscation of crime-related proceeds, instrumentalities and property provides:

“Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.”

COMPLAINTS

1. Relying on Articles 6 §§ 1 and 2 and Article 13 of the Convention, as well as on Article 1 of Protocol No. 1 to the Convention the first and the second applicants complain about the forfeiture of their assets under the Forfeiture of Proceeds of Crime Act 2005. They argue that the forfeiture was (a) not based on a clear and foreseeable law and was (b) arbitrary and disproportionate because of the nature and the extent of the presumptions laid down in the 2005 Act and because the reversal of the burden of proof in the proceedings allowed the domestic courts to order forfeiture without establishing a link between the assets and the offence committed by the first applicant.

2. Relying on Article 4 of Protocol No. 7 to the Convention the first applicant complains that in the proceedings under the 2005 Act he was punished again for the same offence for which he was already punished with the judgment of the Pleven Regional Court of 20 October 2002.

3. The third and the fourth applicants complain under Articles 6, 8, 13 and Article 1 of Protocol No. 1 that they did not have an opportunity to participate in the proceedings in which their only home was forfeited.

QUESTIONS TO THE PARTIES

1. Was Article 6 § 1 of the Convention applicable to the proceedings in the present case under its civil or criminal head? Did Article 6 § 2 of the Convention apply to the forfeiture proceedings (see *Phillips v. the United Kingdom*, no. 41087/98, §§ 31-36, ECHR 2001-VII and *Van Offeren v. the Netherlands* (dec.), no. 19581/04, 5 July 2005)? Did the application to the first and the second applicants of the relevant provisions of the 2005 Act and in particular the operation of the statutory presumptions under the Act deprive them of a fair hearing or did it breach their right to the presumption of innocence?

2. Was the forfeiture of the first and second applicants' assets a lawful and proportionate interference with the peaceful enjoyment of their possessions within the meaning of Article 1 of Protocol No. 1 (see *Phillips v. the United Kingdom*, no. 41087/98, §§ 48-54, ECHR 2001-VII and *Bongiorno and Others v. Italy*, no. 4514/07, §§ 40-52, 5 January 2010)? In particular, was the applicable legislation sufficiently precise on the conditions of forfeiture? Were the domestic courts required to analyse whether there was a link between the assets proposed for forfeiture and the specific crime and did they do so in the present case?

3. Did the first and second applicants have at their disposal an effective domestic remedy for their complaints under Article 1 of Protocol No. 1, as required by Article 13 of the Convention?

4. Did the confiscation of the first applicant's property in the proceedings under the Forfeiture of Proceeds of Crime Act 2005 amount to the imposition on him of a heavier penalty than the one which was applicable at the time of the commission of the offence in the present case, as prescribed by Article 7 of the Convention (see *Welch v. the United Kingdom*, 9 February 1995, §§ 22-36, Series A no. 307-A)?

5. Were the third and fourth applicants constituted as defendants in the forfeiture proceedings under the Forfeiture of Proceeds of Crime Act 2005? Was the forfeiture by the judgment of 3 January 2012 of the Supreme Court of Cassation of a plot of land and a house standing on it in compliance with the third and fourth's applicants' rights under Articles 6, 8, 13 and Article 1 of Protocol No. 1?