

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

THIRD SECTION

CASE OF MARKOVA v. BULGARIA

(Application no. 44251/18)

JUDGMENT

STRASBOURG

16 April 2024

This judgment is final but it may be subject to editorial revision.



In the case of Markova v. Bulgaria,

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

Ioannis Ktistakis*, President*,
Yonko Grozev,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 44251/18) 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") on 11 September 2018 by a Bulgarian national, Ms Veselka Georgieva Markova ("the applicant"), who was born in 1971 and lives in Sofia; she was represented before the Court by her husband, Mr M. Markov, who was granted leave under Rule 36 §§ 2 and 4 (a) *in fine* of the Rules of Court to present her case;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms M. Kotzeva from the Ministry of Justice;

the parties' observations;

the decision to reject the Government's objection to the examination of the application by a Committee;

Having deliberated in private on 26 March 2024,

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

SUBJECT MATTER OF THE CASE

1. The case concerns access to court.

2. A real estate agency initiated order-for-payment proceedings against the applicant in April 2017, claiming that the applicant had failed to pay a fee agreed upon under a brokerage contract. It presented the contract, which mentioned the applicant's address at that time and the address of the flat she had bought. An order for payment was issued by the Sofia District Court on 10 May 2017. In principle, notice of it had to be served to the applicant, who could object, if she so wished. Service was attempted on a third address, which the Sofia District Court established to be the applicant's address declared to the local authorities, but already during her first visit the service officer found that the applicant no longer lived there, and had in fact moved out nine years earlier. Nonetheless, the service officer visited the same address several more times, and then attached the notice to the door. Later on, observing that no objection to the order for payment had been received, the Sofia District Court issued a writ of execution on 23 October 2017.

3. Once the real estate agency initiated enforcement proceedings, on 6 November 2017 a bailiff had the writ served on the applicant at her workplace. Finding out about the proceedings against her, the applicant

finally objected against the order for payment. The objection could be accepted, under Article 423 § 1 of the Code of Civil Procedure, if the applicant could show that the notice had not been duly served on her. However, in a final decision of 12 March 2018 the Sofia City Court found that the notice had to be deemed duly served, as it had been left at the applicant's declared address.

4. Eventually, the applicant paid in full the debt of 3,776 Bulgarian levs (BGN), equivalent to 1,930 euros (EUR), comprising the sum ordered against her, interest and costs.

5. The applicant complained before the Court under Article 6 § 1 of the Convention that she had been denied access to a court to participate in the order-for-payment proceedings.

THE COURT'S ASSESSMENT

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

7. The relevant general principles have recently been summarised in *Berestov v. Russia* (no. 17342/13, §§ 35-37, 18 May 2021). In particular, the Court has previously pointed out that the principle of equality of arms under Article 6 § 1 of the Convention would be devoid of substance if a party to a case were not notified of the hearing in such a way as to have an opportunity to attend it. In cases where civil proceedings had been conducted without the applicant ever having been informed of them, the Court has considered that it must verify: (i) whether the authorities acted diligently in informing the applicant of the proceedings, and whether the applicant could be considered to have waived his or her right to appear before the courts; and, if the response is negative, (ii) whether domestic law provided the applicant with the appropriate means to secure a fresh adversarial hearing (see also *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, § 80, 4 March 2014; *Aždajić v. Slovenia*, no. 71872/12, § 53, 8 October 2015; and *Gyuleva v. Bulgaria*, no. 38840/08, § 38, 9 June 2016).

8. Furthermore, Article 6 § 1 of the Convention does not provide for a specific form of service of documents, but the domestic courts must make reasonable efforts to summon the parties to a hearing (see *Zavodnik v. Slovenia*, no. 53723/13, § 70, 21 May 2015, and *Bacaksız v. Turkey*, no. 24245/09, § 53, 10 December 2019). Even if the parties to proceedings demonstrate a certain lack of diligence, the consequences attributed to their behaviour must be commensurate to the gravity of their failings, and must take heed of the overarching principle of fair hearing (see *Aždajić*, § 71, and *Gyuleva*, § 39, both cited above).

9. In the present case, the applicant was not notified in time of the order for payment issued against her, and could not validly object against it. The

notice was nevertheless deemed duly served, and the applicant was obliged to pay under the resultant writ of execution (see paragraphs 2-4 above).

10. The Government pointed out that service of documents in civil proceedings was a "strictly formal" process, and that only certain means of service, as defined in domestic law, could be seen as valid. According to the Government, domestic courts could not be obliged to summon parties at "all possible addresses mentioned incidentally in documents in the case file". Moreover, the case concerned order-for-payment proceedings, which were by definition intended to be speedy and effective.

11. The Court, for its part, reiterates that domestic courts are required to make reasonable efforts to summon parties to judicial proceedings (see paragraph 8 above). In the case, the Sofia District Court's service officer attempted service several time at an address where it had become clear from the beginning that the applicant could not be found, and eventually notice of the order for payment was deemed served (see paragraph 2 above). However, the domestic court had before it two other addresses, indicated in the main document submitted by the claimant, namely the brokerage contract (ibid.), and never attempted service there, even though it was much more likely that the applicant would be found. The Court does not consider the efforts that would have been required to attempt service at one of these addresses unreasonable or cumbersome, and cannot conclude that the Sofia District Court acted diligently in attempting to notify the applicant of the proceedings against her (compare the similar considerations in *Bacaksız*, cited above, § 58)

12. The Court agrees, on the other hand, with the Government's further argument that the applicant herself contributed to the situation complained of, since she had failed to declare to the authorities the change of her address, and that for the lengthy period of nine years (see paragraph 2 above). Yet, the Court is not satisfied that this failure on the applicant's part is commensurate to the gravity of the consequences suffered, namely the applicant never being notified of the proceedings and the order for payment against her (compare once again *Bacaksız*, cited above, § 60; also *Berestov*, cited above, § 50).

13. It is clear that the applicant did not waive her right to participate in the order-for-payment proceedings (see the principles detailed in paragraph 7 above). As to the possibility to obtain a fresh hearing of the case (ibid.), the applicant resorted to the remedy provided for in Article 423 § 1 of the Code of Civil Procedure (see paragraph 3 above). However, the Sofia City Court rejected her arguments, affirming that notice of the proceedings had to be deemed duly served as it had been left at the applicant's declared address (ibid.).

14. The Court finds furthermore relevant for its analysis the fact that the Code of Civil Procedure has in the meantime been amended. In particular, in October 2017 Article 47 § 3 of the Code was revised to allow service of documents at the place of work – a possibility used in the case by the bailiff to serve the writ of execution on the applicant, quickly after it had been issued

(see paragraph 3 above), but unavailable earlier. In addition, Article 415 § 1 (3) of the Code, dealing expressly with order-for-payment proceedings, was amended in 2019. It provides now that when notice of the order has been left at an address where the defendant has not been found, and there are indications that the defendant does not live there, the court seized with the matter should not issue a writ of execution, but is to indicate to the claimant that they can bring full-scale proceedings for a judicial declaration that the debt exists.

15. It follows from the above that there has been a violation of Article 6 § 1.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed, as pecuniary damage, the sum she had paid at the domestic level, namely the equivalent of 1,930 euros (EUR) (see paragraph 4 above). The Government did not comment.

17. The Court found above a violation of the right to access to a court, but has not reached a conclusion as to the well-foundedness of the claim against the applicant. It cannot therefore conclude that the money paid by the applicant had been undue, and that the State is liable for it in the current proceedings. Accordingly, it rejects the claim.

18. The applicant did not claim non-pecuniary damage, or the reimbursement of costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 April 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President