

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

THIRD SECTION

CASE OF NAKOVSKI v. BULGARIA

(Application no. 78684/17)

JUDGMENT

STRASBOURG

18 July 2023

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



In the case of Nakovski 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. 78684/17) 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 3 November 2017 by a Bulgarian national, Mr Veselin Genov Nakovski, born in 1954 and living in the village of Vranilovtsi ("the applicant"), who was represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv;

the decision to give notice to the Bulgarian Government ("the Government"), represented by their Agent, Ms R. Nikolova from the Ministry of Justice, of the complaints concerning the forfeiture of the applicant's assets in proceedings under the 2005 Forfeiture of Proceeds of Crime Act and the court fees payable by him in those proceedings, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 27 June 2023,

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

SUBJECT MATTER OF THE CASE

1. The case is of the type examined in *Todorov and Others v. Bulgaria* (nos. 50705/11 and 6 others, 13 July 2021), and concerns the forfeiture of assets of the applicant considered to be the proceeds of crime. The assets at issue were assessed to be worth 3,144,250 Bulgarian levs (BGN), the equivalent of about 1,608,000 euros (EUR). The forfeiture was ordered by judgments of the Gabrovo Regional Court of 3 May 2012 and the Veliko Tarnovo Court of Appeal of 2 June 2016, and became final on 22 May 2017, when the Supreme Court of Cassation refused to accept the case for cassation review. The applicant complained under Article 1 of Protocol No. 1 to the Convention, relying also on Articles 6 § 1 and 13 of the Convention, that such forfeiture was unjustified.

2. The applicant complained in addition, relying on Articles 6 § 1 of the Convention and Article 1 of Protocol No. 1, of having been ordered to pay BGN 125,770 (EUR 64,300) in court fees in the judicial proceedings whereby the forfeiture had been ordered.

THE COURT'S ASSESSMENT

I. AS CONCERNS THE FORFEITURE OF THE APPLICANT'S ASSETS

3. The complaint raised by the applicant falls to be examined under Article 1 of Protocol No. 1 (see *Todorov and Others*, cited above, § 129).

4. The complaint 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.

5. The leading judgment of *Todorov and Others* (cited above) concerned the forfeiture of alleged proceeds of crime under the same legislation as applied in the case at hand, namely the Forfeiture of Proceeds of Crime Act 2005 (hereinafter "the 2005 Act"). The Court identified some potential flaws in the 2005 Act and in the manner in which it had been applied. It highlighted in this respect the combined effect of the wide scope of its application – as to predicate crimes and as to the periods for which the defendants' revenues and expenses were being checked, the difficulties for defendants to prove what the courts considered "lawful" income during such a period, marked, moreover, by inflation and economic changes, and the presumption that any asset not shown to have had a "lawful" provenance was the proceed of crime (see *Todorov and Others*, cited above, §§ 200-209).

6. The Court's position was that, while these flaws were not sufficient to render any forfeiture under the 2005 Act contrary to Article 1 of Protocol No. 1, they certainly placed a considerable burden on defendants in forfeiture proceedings. Thus, as a counterbalance, it was crucial that the national courts provided some particulars as to the criminal conduct in which the assets for which forfeiture was being sought had originated, and established a causal link between these assets and any such conduct (ibid., §§ 210-15).

7. Applying these requirements to the specific cases examined in the leading judgment, the Court found a violation of Article 1 of Protocol No. 1 in those of them where the national courts had failed to justify the existence of the causal link defined above, and had ordered forfeiture relying merely on the presumption contained in the 2005 Act that any asset not shown to have had a "lawful" provenance was the proceed of crime (ibid., §§ 217-50).

8. The present case is similar. After concluding that the applicant had not proven sufficient lawful income to acquire the disputed assets, and relying on the above-mentioned presumption on the assets' criminal provenance, the national courts found that this was enough to establish an indirect causal link between the assets and what they called the "criminal activity" of the applicant. Yet, it should be noted that the applicant was convicted for a one-off offence of extortion committed in 1993, which had resulted in no financial gain, and no allegations of any further criminal acts were made; any link

between the offence and the forfeited assets – worth, as noted, about EUR 1,608,000 – was by no means evident.

9. The national courts did not thus undertake the necessary analysis, as outlined in paragraph 5 above, and took the same approach as criticised in *Todorov and Others* (cited above).

10. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. AS CONCERNS THE COURT FEES

11. The applicant complained in addition of the allegedly excessive court fees he had been liable to pay. As mentioned, the amount ordered against him was BGN 125,770 (EUR 64,300) (see paragraph 2 above).

12. The sum above was payable to the Gabrovo Regional Court which had examined the case at first instance, and which, after the close of the proceedings in May 2017, obtained a writ of execution and had enforcement proceedings initiated against the applicant. In September 2017 a bailiff visited the applicant, but established that no objects of value could be found in his possession, while all his immoveable properties had apparently been the subject of forfeiture. No further enforcement attempts were undertaken subsequently, and no parts of the sum have ever been paid.

13. The Government argued on the basis of the above that the applicant's obligation to defray the court fees complained of had become time-barred. The applicant responded that this was unproven.

14. The Court observes that, by Article 171 § 1 of the Code of Tax and Insurance Procedure, the statutory limitation period for public receivables such as court fees is five years, to be counted from 1 January of the year following the one during which payment had to be made. A fresh limitation period starts to run whenever the fiscal authorities undertake action to seek payment (Article 172 § 2).

15. In the present case, the fees exacted from the applicant were payable in 2017, and the only attempt to obtain payment was undertaken in September of that year. Thus, the five-year limitation period must have started running on 1 January 2018, and has not been interrupted. It has lapsed, and even though the authorities have made no formal finding of the matter, the applicant can already seek to have the debt written off (see *Kirov and Others v. Bulgaria* (dec.), no. 57214/09, §§ 44-45, 9 January 2018).

16. The circumstances above lead the Court to consider that it is no longer justified to continue the examination of this part of the application, within the meaning of Article 37 § 1 (c) of the Convention. No particular reason relating to respect for human rights as defined in the Convention and the Protocols thereto requires the Court to continue its examination under Article 37 § 1 *in fine* (ibid, § 46).

17. The Court would also reiterate that after it has struck an application (or part thereof) out of its list of cases it can at any time decide to restore it to

the list if it considers that the circumstances justify such a course, in accordance with Article 37 § 2 of the Convention (see *Khan v. Germany* [GC], no. 38030/12, § 41, 21 September 2016).

18. Consequently, this part of the application should be struck out of the Court's list of cases.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

19. In respect of pecuniary damage, the applicant claimed the value of his forfeited assets, plus interest and compensation for loss of profit. He claimed in addition EUR 5,000 in respect of non-pecuniary damage.

20. The Government contested the claims.

21. The Court cannot itself speculate on whether the applicant's forfeited assets were or were not the proceeds of crime, and cannot thus determine any pecuniary damage which the applicant might have suffered as a result of unjustified forfeiture. It reiterates, as in *Todorov and Others* (cited above, §§ 320-22), that the most appropriate means to remedy the violation is the reopening of the domestic proceedings and the re-examination of the matter by the domestic courts, in compliance with the requirements of Article 1 of Protocol No. 1.

22. Furthermore, whether or not the claimed loss of profit was the result of unjustified actions on the part of the State is likewise a matter of speculation. Also, the applicant will be able to seek compensation at the domestic level on that account if eventually the forfeiture claims against him are fully or partially dismissed (see *Todorov and Others*, cited above, § 323).

23. In view of the above the Court dismisses the claims related to pecuniary damage.

24. On the other hand, the Court awards EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

25. As regards costs and expenses, the applicant claimed, in the first place, the reimbursement of BGN 44,320 (EUR 22,660) actually paid by him in the domestic proceedings.

26. The applicant claimed, in the second place, the following amounts for the proceedings before the Court: a) EUR 6,000 for his legal representation; b) BGN 700 (EUR 357), paid for expert valuations of the forfeited properties and to obtain documents related to the enforcement of the forfeiture order against him; and c) BGN 762 (EUR 390) paid for postage and translation. In support of these claims the applicant submitted receipts and a contract for legal representation.

27. The Government contested the claims, finding them exaggerated. They argued that the expenses described under b) in the preceding paragraph had been unnecessary, seeing the Court's decision in *Todorov and Others* not to award the value of the forfeited assets, as well as the fact that the

Government had submitted all necessary documents concerning the enforcement.

28. The Court dismisses the claim related to the costs and expenses in the domestic proceedings (see paragraph 25 above). If the applicant seeks the reopening of the proceedings and is ultimately successful, he can claim the reimbursement of these expenses from the State, as entitled under Article 245 § 3 and Article 309 § 2 of the Code of Civil Procedure.

29. On the other hand, having regard to the circumstances of the case, in particular its repetitive character, as well as to the objections raised by the Government, the Court considers it reasonable to award 2,500 EUR for the costs and expenses incurred in the proceedings before it, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning the forfeiture of the applicant's assets admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 on account of that forfeiture;

3. *Decides* to strike out the application in so far as it concerns the applicant's complaints about the court fees he was ordered to pay in the forfeiture proceedings;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 18 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President