

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

THIRD SECTION

CASE OF ZAGORSKA v. BULGARIA

(Application no. 53285/15)

JUDGMENT

STRASBOURG

24 October 2023

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



In the case of Zagorska 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. 53285/15) 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 21 October 2015 by a Bulgarian national, Ms Maria Stoyanova Zagorska, born in 1939 and living in Sofia ("the applicant"), who was represented by Ms K. Bozukova-Peeva, a lawyer practising in Sliven;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms I. Stancheva-Chinova from the Ministry of Justice;

the parties' observations;

Having deliberated in private on 3 October 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 as proceeds of crime.

2. The competent body – the Commission for Uncovering Proceeds of Crime (hereinafter "the Commission") – applied for forfeiture after in 2008 the applicant had been convicted for embezzlement: she had appropriated 43,345 euros (EUR) owned by an association she had headed, but had eventually returned the money. The Commission verified the applicant's income and expenditure between 1985 and 2008. Its forfeiture application concerned 108,067 Bulgarian levs (BGN), equivalent to EUR 55,300 – money available on bank accounts of the applicant. The sum was forfeited in a final judgment of the Supreme Court of Cassation of 25 June 2015. The national courts found that the applicant had opened the bank accounts at about the same time when she had committed embezzlement (between 2005 and 2007), that she had not had sufficient lawful revenues to justify owning such a sum of money, her expenses during the period under examination surpassing her lawful income, and that she had not rebutted the presumption on the criminal provenance of the money. The applicant complained, relying on Article 1 of Protocol No. 1 and Article 13 of the Convention, that the forfeiture had been unfair, in particular because it had resulted in a double repayment of the appropriated money.

3. The applicant complained in addition under Article 1 of Protocol No. 1 of having to cover the Commission's litigation costs. In particular, the first-instance court had ordered her to pay BGN 2,611 (EUR 1,336) for the Commission's representation by an in-house lawyer, and BGN 200 (EUR 102) for other expenses. The former amount equalled what would have been the minimum remuneration of a private party's lawyer in proceedings concerning a claim with the same value, in accordance with the practice of the national courts at the time. The second-instance court, on the other hand, noting the award made by the lower court, awarded BGN 200 (EUR 102) for the Commission's representation, while the Supreme Court of Cassation, without giving any specific reasons, awarded BGN 830 (EUR 425) on that account. The global amount of adverse costs, totalling BGN 3,841 (EUR 1,965), was paid by the applicant on 29 July 2015.

THE COURT'S ASSESSMENT

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

4. The complaint falls to be examined under Article 1 of Protocol No. 1 alone (see *Todorov and Others*, cited above, § 129).

5. 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.

6. 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).

7. 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 subject to forfeiture had originated, and established a causal link between these assets and any such conduct (ibid., §§ 210-15). 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 requisite causal link (ibid., §§ 217-50).

8. In the present case, it is significant that the applicant returned the money she had appropriated (see paragraph 2 above), and it has not been alleged that she had otherwise profited from the predicate offence, or that she had been engaged in any further criminal activity. Even though the national courts noted that the applicant had deposited money on bank accounts at about the same time when she had committed the predicate offence (ibid.), they seem to have failed to properly account for the fact that the appropriated money, as mentioned, had been returned, and that the predicate offence had in itself thus yielded no financial gain. The national courts did not therefore justify the forfeiture in compliance with the requirements of Article 1 of Protocol No. 1, as defined above.

9. There has accordingly been a violation of that provision.

II. AS CONCERNS THE COMMISSION'S LITIGATION COSTS

10. The applicant complained, in the next place, of having been ordered to cover the Commission's litigation costs (see paragraph 3 above).

11. The payment order was made in accordance with domestic law, which embodies the "loser pays" rule: the unsuccessful party in civil proceedings has to pay the successful party's costs. The Court has already held that such a rule is not in itself contrary to Article 1 of Protocol No. 1, even in proceedings where the State is a party (see *Cindrić and Bešlić v. Croatia*, no. 72152/13, § 96, 6 September 2016). The applicant did not contest the rule itself.

12. What the applicant argued before the Court was that the order against her to cover the Commission's costs had been unjustified because the Commission had had no legal grounds to seek the forfeiture of her money.

13. Even though the Court found above a violation of the applicant's rights with regard to the forfeiture of her property, that violation is of a procedural nature, as the Court criticised the domestic courts' failure to show properly that the money on the applicant's bank accounts was the proceeds of crime, but did not itself reach a conclusion on the matter (see paragraph 8 above). The applicant will have the possibility to apply for the reopening of the forfeiture proceedings on the basis of the Court's conclusion of a violation (see, for the Court's findings on reopening in the similar cases examined in *Todorov and Others*, §§ 321-22 of the judgment cited above), and if she is ultimately successful in disproving the Commission's claim, that is if it is shown that this clam was indeed unjustified, she can seek to be reimbursed for the Commission's litigation costs, under Article 245 § 3 and Article 309 § 2 of the Code of Civil Procedure. At the current stage however the Court sees no reason to conclude that the costs awarded against the applicant were

unjustified, on the sole ground that the forfeiture might not have been warranted.

14. As to the amount of the costs at issue, the applicant had to pay the equivalent of EUR 1,965 in total (see paragraph 3 above). This sum does not appear excessive, seeing the undeniable complexity of a forfeiture case (contrast, for example, *National Movement Ekoglasnost v. Bulgaria*, no. 31678/17, § 82, 15 December 2020, where the Court criticised as excessive the order for the applicant association to pay the equivalent of about EUR 6,000 for the legal representation of an opposing party in reopening proceedings raising merely procedural issues), and the fact that the sum was awarded for three levels of jurisdiction (compare in that regard the considerations in *Hoare v. the United Kingdom* (dec.), no. 16261/08, § 60, 12 April 2011). It should also be noted that, while the first-instance court awarded the Commission EUR 1,336 for its legal representation – the minimum amount it would have awarded a private party – the second-instance court and the Supreme Court of Cassation made much smaller awards, the former of them taking expressly into account the award already made at the lower level (see paragraph 3 above). The applicant, for her part, did not object at the domestic level to the awards made.

15. The applicant argued that the order to pay adverse costs had placed on her an excessive financial burden. The Court has indeed previously taken into account the applicants' individual financial situation when assessing the reasonableness of similar orders against them (see, for example, *Cindrić and Bešlić*, cited above, § 109, and *Bursać and Others v. Croatia*, no. 78836/16, § 103, 28 April 2022). However, the applicant here has provided no details about her own financial situation, and the Court is thus unable to make a similar assessment (compare *Taratukhin v. Russia* (dec.), no. 74778/14, § 46, 15 September 2020).

16. In view of the above considerations, the Court is of the view that the order for the applicant to bear the Commission's litigation costs in the forfeiture proceedings did not amount to a disproportionate burden on her.

17. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. The applicant did not claim pecuniary damage in connection with the complaint concerning the forfeiture of her assets. As to non-pecuniary damage, she claimed 20,000 euros (EUR). She claimed in addition, under the head of costs and expenses, EUR 2,030 paid for her legal representation before the Court. In support of the latter claim the applicant presented a receipt.

19. The Government contested the claims.

20. Having regard to the circumstances of the case, the Court awards EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

21. Moreover, having regard to the documents in its possession, the Court awards in full the amount claimed for costs and expenses. It thus awards an additional EUR 2,030, 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 and the remainder of the application inadmissible;

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

3. *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 2,030 (two thousand and thirty 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;

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

Done in English, and notified in writing on 24 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President