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

SECOND SECTION

DECISION

Application no. 31015/20
Zoran DANEVSKI
against North Macedonia

The European Court of Human Rights (Second Section), sitting on 26 November 2024 as a Committee composed of:

Pauliine Koskelo*, President*,
Jovan Ilievski,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 31015/20) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 July 2020 by a Macedonian/citizen of the Republic of North Macedonia, Mr Zoran Danevski ("the applicant"), who was born in 1963, lives in Sveti Nikole and was represented by Mr Z. Davidovikj, a lawyer practising in Skopje;

the decision to give notice of the applicant's complaints concerning his conviction *in absentia*, the related prison sentence and the impossibility of a retrial to the Government of North Macedonia ("the Government"), represented by their Agent, Ms D. Djonova, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's complaints under Article 5 § 1 and Article 6 of the Convention concerning his conviction *in absentia* and the related prison sentence, which was enforced following his extradition in the context of another set of criminal proceedings, and the fact that he was unable to obtain a retrial.

2. On 29 November 2012 an investigating judge opened a criminal investigation *in absentia* in respect of the applicant for tax evasion ("the tax evasion proceedings"). On 16 July 2013 a bill of indictment was served on the applicant in Bulgaria and on 29 July 2013 he objected to it in writing. On 2 April 2014 the Shtip Court of First Instance ("the trial court") decided to try the applicant *in absentia* following a notification from the Bulgarian authorities that he had fled the country. After a remittal, on 28 December 2015 the trial court convicted the applicant and sentenced him to five years' imprisonment and a fine. On 3 October 2016 the Shtip Court of Appeal ("the appeal court") upheld that judgment.

3. In the meantime, on 20 May 2016 the applicant had been extradited to the respondent State for the enforcement of a sentence imposed in another, unrelated set of criminal proceedings. On 7 November 2016 he lodged a request for the reopening of the tax evasion proceedings (see paragraph 2 above). The domestic courts dismissed the request at two levels of jurisdiction and on 20 November 2019 the Supreme Court also dismissed a request by the public prosecutor for a review of the legality of those decisions. It held that a retrial was not possible because a person who had been extradited could not be tried for any offence committed prior to the extradition that was not the subject of the extradition proceedings. The decision was served on the applicant on 6 February 2020.

4. On 6 February 2018 the applicant began serving the sentence imposed in the tax evasion proceedings (see paragraph 2 above). By a decision of 7 October 2021, confirmed on 2 November 2021, the Strumica Court of First Instance stayed the enforcement of that sentence. It found that the statutory conditions for it to be enforced had not been fulfilled, given that under the relevant domestic and international law only a sentence imposed in relation to the extradition proceedings could be enforced against an extradited person. In July and August 2022 the domestic courts, at two levels of jurisdiction, decided to count the period he had served (three years, three months and twenty-one days) towards the enforcement of another prison sentence imposed in a different set of criminal proceedings. They noted that the sentence imposed in the tax evasion proceedings remained fully unenforced. They found that the applicant could not serve a sentence for which he had not been extradited.

5. The applicant complained under Article 5 § 1 of the Convention that he had been imprisoned to enforce a sentence imposed *in absentia* in relation to which he had not been extradited. He further complained under Article 6 § 3 about the impossibility of obtaining a retrial.

THE COURT'S ASSESSMENT

6. The Court does not consider it necessary to address all objections to the admissibility of the application lodged by the Government (namely, that the

application was an abuse of the right of application, that it was lodged outside the six-month time-limit and that domestic remedies had not been exhausted) as the application is in any event inadmissible for the following reasons.

7. The general principles concerning prison sentences imposed and trials conducted *in absentia* have been summarised in *Stoichkov v. Bulgaria* (no. 9808/02, §§ 51 and 54-56, 24 March 2005) and *Yeğer v. Turkey* (no. 4099/12, §§ 46-47, 7 June 2022) concerning the guarantees under Article 5 § 1, and in *Sejdovic v. Italy* ([GC], no. 56581/00, §§ 81-95, ECHR 2006-II) and *Sanader v. Croatia* (no. 66408/12, §§ 67-74, 12 February 2015) concerning the Article 6 guarantees. In particular, if a "conviction" is the result of proceedings which were a "flagrant denial of justice", i.e. were "manifestly contrary to the provisions of Article 6 or the principles embodied therein", the resulting deprivation of liberty would not be justified under Article 5 § 1 (a) (see *Stoichkov*, cited above, § 51). A denial of justice undoubtedly occurs where a person convicted *in absentia* is subsequently unable to obtain from the court a fresh determination of the merits of the charge, where it has not been unequivocally established that he or she has waived the right to appear and to defend himself or herself or intended to escape trial (see *Sanader*, cited above, § 68).

8. As to the applicant's complaint under Article 6 regarding the impossibility for him to obtain a retrial, the Court observes that the applicant was served with a copy of the bill of indictment in the tax evasion proceedings (contrast, for example, *Yeğer*, cited above, § 32) and he submitted written comments in that regard. There is therefore no doubt that he was aware that those proceedings were pending against him. Consequently, he could expect to be brought to trial. Despite that, he fled Bulgaria, where the bill of indictment had been served. This rendered unsuccessful the domestic courts' attempts, with the assistance of the Bulgarian authorities, to summon him to a hearing. Subsequently, he was extradited to the respondent State while the tax evasion proceedings were still pending on appeal. Nevertheless, there is no indication that he made any enquiries as to the outcome or the progress of those proceedings. In such circumstances, the Court agrees with the Government's argument that the applicant knew of the prosecution and of the charges against him, but unequivocally waived his right to appear in court by deliberately evading justice (compare *Medenica v. Switzerland*, no. 20491/92, § 58, ECHR 2001-VI). His argument that he had subsequently requested the reopening of the criminal proceedings can have no bearing on the finding that he had previously sought to escape trial. Therefore, the applicant's complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and must be declared inadmissible in accordance with Article 35 § 4.

9. As to the applicant's complaints under Article 5, the Court considers, for the reasons set out in paragraph 8 above, that the applicant's deprivation of liberty, under Article 5 § 1 (a), was not following a conviction which was

the result of proceedings manifestly contrary to the provisions of Article 6 and the principles embodied therein. The complaint concerning the deprivation of liberty imposed following a conviction *in absentia* is therefore also manifestly ill-founded and must be rejected under Article 35 §§ 3 (a) and 4.

10. As to the applicant's complaint that he was deprived of his liberty due to the enforcement of a sentence which had not been covered by the extradition proceedings, the Court considers that the question arises of whether the applicant can still claim to be a victim of the violation alleged. In this respect it reiterates that it falls, firstly, to the national authorities to redress any violation of the Convention. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him of his status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention. As to the redress which is appropriate and sufficient in order to remedy a breach of a Convention right at national level, the Court has generally considered this to be dependent on all the circumstances of the case having regard, in particular, to the nature of the Convention violation at stake (see, for example *Klinkel v. Germany* (dec.), no. 47156/16, § 27, 11 December 2018). In the present case, in October 2021 the Strumica Court of First Instance acknowledged that the statutory requirements for the enforcement of the sentence imposed in the tax evasion proceedings had not been fulfilled (compare also *Porchet v. Switzerland* (dec.), no. 36391/16, § 16 *ab initio*, 8 October 2019). The Court is therefore satisfied that the domestic courts recognised that the applicant's detention in this regard was not lawful and thus acknowledged in substance a breach of Article 5 § 1, which presupposes that a detention must be "lawful" (compare, in the context of Article 6, *Lozhkin v. Russia* (dec.), no. 16384/08, §§ 18-20, 22 October 2013). Furthermore, the applicant was offered full redress for the execution of his unlawful sentence as the period he had served in that regard was fully deducted from another sentence he still had to serve (see paragraph 4 above; see for other instances in which the Court has recognised that the reduction of a sentence can amount to sufficient redress, instead of monetary compensation being granted, *Porchet*, cited above, §§ 17-25 with further references). For these reasons, the applicant can no longer claim to be the "victim" of a violation of Article 5 § 1 of the Convention for the purposes of Article 34 of the Convention, concerning the enforcement of his imprisonment sentence for which he had not been extradited. This part of the application must therefore be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 19 December 2024.

Dorothee von Arnim Deputy Registrar	Pauliine Koskelo President