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

THIRD SECTION

DECISION

Application no. 45979/17
Tsvetan Krasimirov IVANOV and Others
against Bulgaria

The European Court of Human Rights (Third Section), sitting on 26 March 2024 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. 45979/17) 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 22 June 2017 by 22 Bulgarian nationals, relevant details listed in the appended table, ("the applicants") who were represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv;

the decision to give notice of the complaints concerning discrimination and lack of an effective related remedy to the Bulgarian Government ("the Government"), represented by their Agent, Ms I. Stancheva-Chinova, of the Ministry of Justice, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns complaints, under Article 14 in conjunction with Article 8 of the Convention, by parents and siblings of seriously disabled children and the children themselves, about a failure of the State to protect their private and family life in an effective and non-discriminatory manner. Specifically, the applicants claim that under the relevant legislation the amount of money in the form of social benefits which they are eligible to

receive for the care of the children is lower than the amount of money to which foster families caring for disabled children are eligible. The applicants complain that they are thus discriminated in comparison to foster families, since the State does not provide them with equal protection. They emphasise that the relevant legal provisions have remained unchanged since 2013 (see paragraphs 2 and 3 below) and that they have had no effective domestic remedy at their disposal, in breach of Article 13 of the Convention.

2. In a decision of 17 March 2011, the Commission Against Discrimination ("the Commission") ruled on an application by a non-governmental organisation, which had claimed that several pieces of legislation were discriminatory vis-à-vis (biological) parents of disabled children. The Commission, having heard as witnesses a number of parents of such children who had relayed the challenges related to providing permanent care to their children, considered that the constitutional principle of equality required the legislator to adopt measures aimed at effective levelling up of opportunities afforded in law to that particularly vulnerable social group (parents caring for their seriously disabled children). It noted that the law, as it stood at the time, made it rather difficult for (biological) parents to realistically provide the requisite care to their children; the law further failed to ensure that the authorities adequately used the financial resources, which they had set aside for social benefits, so as to enable such parents to effectively cater for their disabled children. The Commission found that a situation, where (biological) parents of seriously disabled children had less opportunities in law to provide care for those children compared to the rest of society and in particular to foster families, represented indirect discrimination in breach of section 4 of the Protection Against Discrimination Act ("the PADA"). It instructed the Minister for Labour and Social Policy to draft a bill aimed at levelling up opportunities provided to the discriminated group, and recommended to the Council of Ministers to submit such a bill before Parliament.

3. The finding of discrimination for the above-mentioned reasons was upheld by two levels of administrative courts before which the proceedings had continued. The final judgment was adopted on 10 July 2013 by a five-member formation of the Supreme Administrative Court. In it, in addition to its findings on the merits as regards discrimination, the court quashed the instruction given to the Minister (see paragraph 2 above) and left in place the recommendation to the Council of Ministers (ibid.).

THE COURT'S ASSESSMENT

A. Alleged violation of Article 14 in conjunction with article 8 of the convention

4. The Court observes that the salient question raised by the application is whether the applicants, as members of a group of (biological or adoptive) families of seriously disabled children, have – as a result of the applicable law – been subjected to discriminatory (less favourable) treatment on the basis of their family/social status when compared to foster families.

5. The general principles related to the prohibition of discrimination have been summarised in *Fábián v. Hungary* ([GC], no. 78117/13, § 113, 5 September 2017). In order for an issue to arise under Article 14, there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (ibid., with further references).

6. The Court observes that, when they dealt with the issue of discrimination, the deciding national authorities – the Commission and the administrative courts alike – did not carry out an analysis of whether, in the first place, there were two groups that could be said to be in an analogous or relevantly similar situation. Instead, they appear to have examined in global terms the issue of social benefits available in law and aimed at facilitating care for disabled children. They concluded that the competent entities had to adopt measures, as part of their positive obligations under domestic and international law, for the purpose of closing the gap they appear to have found existed – in terms of opportunities to provide care – between (biological) parents and foster families.

7. The Court finds that the question raised by the application before it is two-fold. On the one hand, the applicants invite the Court to examine the complaint from the perspective of the applicants who are parents (and siblings) of the disabled children. Accordingly, it has to rule in terms of whether (some of) the applicants, parents and siblings of seriously disabled children, were discriminated against in comparison to foster families, as a result of the former being eligible to receive less State/municipal aid than the amount the latter could rely on from those sources. On the other hand, the applicants invite the Court to examine whether (the rest of) the applicants, seriously disabled children themselves, are discriminated against because under the law their parents can receive less in social benefits for their care compared with the amount available for that to foster families.

8. In respect of the first question indicated in the paragraph immediately above, the following is of relevance. It cannot be said that parents (be it biological or adoptive), or siblings for that matter, of disabled children are in an analogous or relevantly similar situation with "foster families" (contrast with *Konstantin Markin v. Russia* [GC], no. 30078/06, § 133, ECHR 2012 (extracts), where the Court found that for the purposes of parental leave the

applicant, a serviceman, was in an analogous situation to servicewomen; *X and Others v. Austria* [GC], no. 19010/07, § 112, ECHR 2013, where same-sex couples were found to be in a relevantly similar situation to a different-sex couple in which one partner wished to adopt the other partner's child; *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 68, 24 January 2017, where the applicants, who had been given life sentences, were in an analogous situation to all other offenders who had been convicted of the same or comparable offences, and *Yocheva and Ganeva v. Bulgaria,* nos. 18592/15 and 43863/15, § 108, 11 May 2021, where single mothers of children of unknown fathers were found to be in a relevantly similar situation to mothers who are widows or whose children's fathers have legally recognised them).

9. The category of biological or adoptive parents, or siblings, of disabled children exists in the context of families, which in turn are groups of parents and their children living together as a unit with all that this involves in terms of filiation rights and obligations under the law. Foster families, despite the term employed by the legislator, are professional social services providers, which have been set up to cater for children in need, primarily temporarily, and which do not have filiation rights to the children in their care. As the Government explained, the rationale for creating the latter category, the so-called "foster families", has been to provide care, away from the collective institutions (orphanages) in Bulgaria that had long been criticised by specialised international organisations for being inadequate, to children who have no families of their own capable of taking care of them.

10. Therefore, foster families, created as they were to fill a gap and provide – in the place of the State – personal care to children in need, cannot be said to be in a relevantly similar situation to biological or adoptive parents or siblings. The fact that the State organised the functioning of that service provider by means of a paid contract, effective only when a child is actually placed in its care, is only logical; the fact that the service provider is also eligible for receiving some social benefits if the child in its care is seriously disabled does not put it on par with families. On the one hand, foster families are purpose-built configurations set up by the State – following a strict and lengthy selection procedure and subject to regular State supervision – with the objective of providing alternative care to children in need; biological or adoptive families on the other hand are social units of people related to each other by close ties. The Court accepts the Government's arguments in that connection. Therefore, the complaint made by the parents and siblings applicants is manifestly ill-founded, as the two groups are not comparable.

11. In respect of the second aspect of the complaint indicated in paragraph 7 above, namely that made before the Court by the children themselves to the effect that the law entitles seriously disabled children to benefit from less social assistance aimed at their care when they are cared for

in their natural families than if they were to be taken in by foster families, the Court finds as follows.

12. Importantly, no complaint has been made at the national level on behalf of the children themselves and, as a result, no such complaint has been examined domestically (see paragraph 2 above). The complaint brought before the Commission and the courts alike was made exclusively from the perspective of the parents of such children. The Court will not deal with the question whether an issue of exhaustion of domestic remedies will thus arise before it, because in any event it finds that the complaint is inadmissible as being manifestly ill-founded for the reasons below.

13. In the first place, it cannot be said that seriously disabled children cared for by their own (biological or adoptive) parents are in an analogous, or relevantly similar, situation to those placed for care in foster families' settings. The considerations examined in paragraphs 8 to 10 above to that effect are of relevance also in the present analysis, seeing that the very settings in which such children are cared for – natural families or foster families – cannot be said to be comparable.

14. Secondly, the Court notes that, as the children are not eligible to receive financial assistance themselves, but any such assistance is obtained by the parents, it is only the quality of care that children would receive in the different settings that could potentially constitute a different treatment vis-à-vis the children. In that connection, the Court observes that no information has been submitted to the Court enabling it to assess the quality of care enjoyed by children in those different types of environments. Neither the applicants have provided information allowing to draw a comparison between the quality of overall care which children cared for in the two different types of settings tend to receive, nor did the national authorities carry out an analysis of the overall care children enjoyed depending on where they happened to live. The Court considers that the question of overall care provided to such children is in any event case-specific and as such cannot be generalised. It is likewise impossible to say that the care which seriously disabled children receive in the different settings mentioned above can be assessed by a mere reference to the pecuniary assistance each of those categories of entities are eligible for in law, despite a complaint before the Court seemingly made to that effect. The reason is that, as mentioned above, any financial assistance is only one of the aspects of care which such children enjoy in the different settings, the overall care depending on a number of other factors and circumstances which vary greatly and depend on context. As a result, financial assistance cannot be examined in isolation when assessing the level or quality of care enjoyed by seriously disabled children. Accordingly, this complaint, made by the children applicants, is also manifestly ill-founded.

15. Finally, the complaint before the Court does not relate to a situation in which the State can be said to have failed to treat differently persons whose

situations are significantly different, in order for example to correct factual inequalities (see, in respect of that aspect of States' obligations, *Taddeucci and McCall v. Italy*, no. 51362/09, § 81, 30 June 2016), since the applicants' complaint is rather that the two groups (families and foster families) should have received equal treatment but did not.

16. In view of the above, the Court finds that the matter complained of does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This means that the complaint under Article 14 in conjunction with Article 8 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Other complaints

17. The applicants also raised another complaint under Article 13 of the Convention in conjunction with Article 8.

18. The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint either does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto. It follows that this part of the application must 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 18 April 2024.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President

Appendix

List of applicants:

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Tsvetan Krasimirov IVANOV	1974	Bulgarian	Targovishte
2.	Mirela Petkova BARZINA	2012	Bulgarian	Sofia
3.	Valentina Petkova BARZINA	1974	Bulgarian	Sofia
4.	Yana Stoyanova DIMITROVA	1983	Bulgarian	Svilengrad
5.	Mihail Stanislavov GENOV	2013	Bulgarian	Sliven
6.	Mila Stanislavova GENOVA	2011	Bulgarian	Sliven
7.	Miroslav Tonchev HRISTOV	1968	Bulgarian	Targovishte
8.	Ivanka HRISTOVA	1965	Bulgarian	Targovishte
9.	Pasionaria Ivanova ILCHEVA	2002	Bulgarian	Dobrich
10.	Blagoy Georgiev IVANCHEV	1978	Bulgarian	Pazadjik
11.	Georgi Blagov IVANCHEV	1955	Bulgarian	Pazadrzhik
12.	Lilyana Mateva IVANCHEVA	1958	Bulgarian	Pazadrzhik
13.	Stanislav Genov IVANOV	1973	Bulgarian	Sliven
14.	Aleks Tsvetanova IVANOVA	2001	Bulgarian	Targovishte
15.	Eleonora Bogdanova IVANOVA	1976	Bulgarian	Targovishte
16.	Dimitar Yanakiev MINKOV	1979	Bulgarian	Svilengrad
17.	Elena Dimitrova MINKOVA	2009	Bulgarian	Svilengrad
18.	Lora Lyubenova OBRETENOVA	1985	Bulgarian	Sofia
19.	Nina Mitkova SODADZHIEVA	1977	Bulgarian	Sliven
20.	Krasimira STOYANOVA	1963	Bulgarian	Dobrich
21.	Tihomir TONCHEV	1997	Bulgarian	Targovishte
22.	Maria Miroslavova TONCHEVA	2003	Bulgarian	Targovishte