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

FIFTH SECTION

DECISION

Application no. 50583/13
KLAAS-2006 OOD
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 7 November 2017 as a Committee composed of:

Nona Tsotsoria, *President,*
Síofra O'Leary,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant is a Bulgarian company called KLAAS-2006 OOD ("the applicant company") with its registered office in Pazardzhik. It is represented by Nikolay Yordanov Batashki, a lawyer practising in Sofia.

2. The Bulgarian Government ("the Government") were represented by their Agent, Ms L. Gyurova of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. In 2010 the applicant company brought proceedings against the State Fund for Agriculture (*Държавен Фонд Земеделие* – hereinafter "the Fund"), asking the court to declare null and void a 2008 administrative decision by which the Fund sanctioned the applicant company for declaring incorrect information in the context of a subsidy application submitted by

the company to the Fund. The Sofia City Administrative Court granted the company's claim on 30 May 2011 and ordered the Fund to pay the applicant company 2,050 Bulgarian levs (BGN) in costs and expenses. That decision became final on an unspecified date.

5. On 16 July 2012 the Sofia City Administrative Court issued the applicant company with a writ of enforcement for the amount of BGN 2,050.

6. On 26 July 2012 a bailiff sent an invitation for voluntary compliance to the Fund, inviting the body to pay BGN 2,781.20. That amount corresponded to the principal judgment debt of BGN 2,050 plus BGN 400 for costs and expenses related to the enforcement proceedings and BGN 331.20 in enforcement-related State fees. The bailiff specified that failure to pay would result in direct-enforcement proceedings (*принудително изпълнение*) against the Fund.

7. A representative of the Fund replied in writing on 31 July 2012 that the body would pay the sum awarded in the final judgment in the applicant company's favour once the latter had complied with the relevant procedure provided in Article 519 of the Code of Civil Procedure. The letter also specified that the procedure required the handing in of the original writ of enforcement by the creditor (the applicant company) to the financial department of the debtor (the Fund). The Fund was then obliged to pay either from the budget of the current year, or from that of the following one.

8. The applicant company apparently did not present the writ of enforcement to the Fund. Instead, the bailiff started direct-enforcement proceedings against the Fund and attached all sums in bank accounts belonging to the Fund which were not directly financed by the State budget. The Fund challenged this action in court. In a final decision of 19 February 2014, the Sofia City Court quashed the attachment of the bank accounts.

9. The executive director of the Fund wrote another letter to the applicant company on 21 March 2015, reiterating its intention to pay the sum due on the basis of the final judgment once the procedure for seeking that payment had been complied with.

B. Relevant domestic law and practice

Enforcement of monetary judgment debts against State authorities

10. Enforcement proceedings were not, and continue not to be, possible where the State owes money. Article 519 of the Code of Civil Procedure 2007 ("the 2007 Code") provides that direct-enforcement proceedings against a State body aimed at collecting a monetary debt are not possible. A writ of enforcement evidencing the claim has to be obtained from the court and then submitted to the authority's financial department. If there are no funds available in the State body's budget, the authorities have to ensure

that funds become available in the next year's budget (see Article 519 § 2 of the 2007 Code).

11. The domestic courts have consistently confirmed that direct-enforcement proceedings against State institutions owing debts on the basis of final judgments were not possible, as well as that the specific procedure to be followed was the one provided in Article 519 of the 2007 Code (реш. № 131859 от 29.05.2017 г. на СРС по гр. д. № 22589/2016 г.; реш. № 198 от 14.07.2010 г. на окр. съд Хасково, г. о. по ч. гр. д. № 380; реш. от 15.05.2015 г. на окр. съд София по ч. гр. д. № 320/2015 г. реш. № 173 от 23.03.2015 г. на окр. съд Пазарджик по гр. д. № 195/ 2015 г.; реш. от 13.07.2016 г. на окр. съд Сливен по гр. д. № 306/ 2016 г.). The Supreme Court of Cassation held in a decision of 2016 that payment by a State entity on the basis of a final judgment is effected after the presentation of the original writ of enforcement to that entity (опр. № 194/27.04.2016 по дело № 604/2016 на ВКС, ТК, I т.о.).

COMPLAINTS

12. The applicant company complained under Articles 6 § 1 and 13 of the Convention about the failure of the State authorities to pay to it a sum owed by virtue of a final domestic court decision and the lack of an effective domestic mechanism for enforcing monetary debts against the State.

THE LAW

13. The Court notes that the applicant company's complaint is in essence about the failure of the Fund, a State entity, to comply with a final judgment in the applicant company's favour by virtue of which the Fund owed money to the applicant company, and the impossibility for the applicant company to oblige the Fund to pay.

14. The Government pointed out that the reason why the Fund had not paid had been the applicant company's failure to follow the applicable procedure. They emphasised that twice, in 2012 and 2015, the Fund had written to the applicant company, explaining the procedure and expressing readiness to pay when the applicant company had complied with it (paragraphs 7 and 9 above).

15. According to the applicant company, presenting the original writ of enforcement to the Fund, as the latter had requested, had been unnecessary. The reason for this had been that, on the one hand, it had not been explicitly required in law and, on the other hand, this procedure had been

characterised by a significant degree of uncertainty that the entity would actually pay.

16. The Court observes that, following the final judgment in the applicant company's favour, it obtained a writ of enforcement in respect of the amount awarded to it in that judgment (see paragraph 5 above). This was the first step in the procedure for seeking enforcement (see paragraph 10 above). As is evident from the domestic law and practice (see paragraph 11 above), in order for the indebted entity to pay, the writ had to be presented to its financial department. The Court observes that the domestic courts have consistently confirmed that this procedure was the legal prerequisite for the enforcement process to be started and completed in situations where a State entity owed payment on the basis of a final judgment (see paragraph 11 above). Furthermore, the Supreme Court of Cassation specifically indicated in a decision of 2016 that the original writ of enforcement had to be presented to the entity from which payment was due.

17. However, there is no indication in the case file, nor has it been argued by the applicant company, that it complied with this procedure. The Fund twice confirmed its readiness to pay once the legal procedure had been followed and the applicant company has not stated that anything prevented it from requesting payment in accordance with the procedure. Instead of doing that, the applicant company launched direct-enforcement proceedings which were explicitly not permitted (see paragraph 11 above). In these circumstances, the Court cannot find that the failure of the State authority in question to pay infringed the applicant company's right to have the judgment in its favour implemented, as part of its right of access to a court protected under Article 6 § 1 of the Convention.

18. It follows that the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 30 November 2017.

Anne-Marie Dougin
Acting Deputy Registrar

Nona Tsotsoria
President