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

FOURTH SECTION

DECISION

Application no. 33654/18
Diana Spasova KOTEVA
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 5 July 2022 as a Committee composed of:

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ludmila Milanova, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 33654/18) 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 6 July 2018 by a Bulgarian and British national, Ms Diana Spasova Koteva ("the applicant"), who was born in 1980 and lives in Plovdiv, represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agents, Ms S. Sobadzhieva and Ms I. Staneva-Chinova, from the Ministry of Justice;

the fact that the United Kingdom Government did not avail themselves of the opportunity to submit written comments in view of the applicant's British nationality;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the applicant's participation in proceedings whereby she was deprived of parental rights in respect of her daughter, who was born in 2004. The action was brought by the child's father in 2015. The applicant was at the time living in the United Kingdom and did not receive the summons to take part in the proceedings, since it had been sent to her address

in Bulgaria. In a judgment of 13 July 2016, the Sofia District Court allowed the action against the applicant. In addition to depriving her of parental rights, it ordered her to pay child maintenance and set out her contact rights.

2. In 2017 the applicant found out about the above-mentioned judgment and sought the reopening of the proceedings, arguing that she had been unfairly denied an opportunity to take part. However, in a judgment dated 25 January 2018 the Supreme Court of Cassation (hereinafter "the Supreme Court") rejected the request, finding that there were no grounds for reopening the proceedings: the applicant had not been found at the address she had declared to the authorities and the Sofia District Court had appointed a special representative for her.

3. The applicant complained, relying on Article 6 § 1 and Article 8 of the Convention, that the Supreme Court had unfairly refused to reopen the proceedings concerning her parental rights. She had thus been deprived of the right to participate in those proceedings and defend her rights.

THE COURT'S ASSESSMENT

4. The applicant's complaints are most appropriately examined under Article 8 of the Convention alone (see *Tsvetelin Petkov v. Bulgaria*, no. 2641/06, § 32, 15 July 2014).

5. The Court has held that the decision-making process involved in measures of interference with rights protected under Article 8 of the Convention must be fair and such as to ensure due respect for the interests of the different parties involved (see, as a recent authority, *Petrov and X v. Russia*, no. 23608/16, § 101, 23 October 2018). With regard to the present case, the Court must determine whether the applicant has been involved in the decision-making process concerning her parental rights to a sufficient degree to provide her with the requisite protection of her interests.

6. The applicant did not receive the summons to take part in the proceedings whereby her daughter's father had applied to have her deprived of her parental rights, as it was sent to an address at which she no longer lived (see paragraph 1 above). When she sought to have the proceedings reopened on the grounds that she had been unfairly deprived of the right to participate in them, the Supreme Court refused (see paragraph 2 above). The complaint under examination as raised by the applicant focuses on that refusal (see paragraph 3 above).

7. However, the Court does not have to determine whether the Supreme Court's refusal to reopen the proceedings did, in itself, breach Article 8 of the Convention. It takes note of the further factual developments described below, of which it was informed after notice of the application was given to the Bulgarian Government.

8. It thus transpires that at about the same time that she applied for the initial case to be reopened, the applicant also brought an action for the

restoration of her parental rights, relying on Article 135 § 2 of the Family Code. That action was allowed in a judgment of the Sofia City Court of 21 January 2021, which became final on 17 November 2021. Under Article 135 § 2 of the Family Code, a parent deprived of parental rights can seek the restoration of such rights at any time, by showing that the grounds which led to the deprivation of those rights no longer exist. A judgment depriving a parent of parental rights is thus considered under Bulgarian law not to have *res judicata* effect. The Supreme Court has held, in an interpretative decision of 31 July 2017, that proceedings of that type are not amenable to reopening, since people affected can resort to "a different means of defence".

9. As noted by the Government, it is unclear why in the case the Supreme Court examined the substance of the applicant's request for reopening (see paragraph 2 above) and did not apply its own interpretative decision cited above. However, the Court reiterates that States enjoy a wide margin of appreciation in setting up procedures and remedies under Article 8 of the Convention (see, among other authorities, *Tsvetelin Petkov*, cited above, § 48). In the present case, the respondent State's choice to provide for proceedings for restoration of parental rights under Article 135 § 2 of the Family Code appears reasonable, and capable of providing redress in a situation such as the one the applicant complained of. The applicant did resort to this avenue of redress and participated in the proceedings, and thus had her case heard. Accordingly, she was sufficiently involved in the decision-making process concerning her parental rights, which is the requirement of Article 8 of the Convention (see paragraph 5 above).

10. As to whether the proceedings under Article 135 § 2 of the Family Code were otherwise effective, in particular with regard to their duration, this is an issue which falls outside the scope of the complaint brought before the Court. As has been noted, that complaint only concerned the Supreme Court's judgment of 25 January 2018 (see paragraph 3 above), and initially the applicant had not even mentioned before the Court the additional developments. In any event, it should also be noted that for the duration of the proceedings under Article 135 § 2, the applicant retained contact rights with her daughter, as set out in the judgment of 13 July 2016 (see paragraph 1 above).

11. In the light of the above, the matters complained of do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the application is manifestly ill-founded and must be rejected in accordance with 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 1 September 2022.

Ludmila Milanova	Tim Eicke
Acting Deputy Registrar	President