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

FOURTH SECTION

DECISION

Application no. 18354/07
Kotse Filipov KOTSEV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 2 July 2015 as a Committee composed of:

Päivi Hirvelä, *President*,
Faris Vehabović,
Yonko Grozev, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having regard to the above application lodged on 4 April 2007,

Having regard to the declaration submitted by the respondent Government on 10 October 2014 requesting the Court to strike the application out of the list of cases,

Having deliberated, decides as follows:

FACTS

The applicant, Mr Kotse Filipov Kotsev, is a Bulgarian national, who was born in 1954 and lives in Sofia. He was represented before the Court by Mr V.V. Bogorov, a lawyer practising in Sofia.

The Bulgarian Government ("the Government") were represented by their Agent, Mr V. Obretenov, of the Ministry of Justice.

The application was communicated to the Government on 7 May 2013.

The applicant was fined for a road offence in 2003. He appealed against it and the court quashed the fine in 2004. The applicant then brought proceedings against the Sofia Department of the Ministry of Interior, seeking compensation under the State Responsibility for Damage Act 1988 for the lawyer's fee of 40 Bulgarian levs (BGN) (around 20 euros (EUR)) which he had paid in order to appeal against the fine. The Sofia District Court granted the applicant's claim on 17 June 2005. The court ordered the Ministry of Interior to pay the applicant BGN 40 as compensation, as well

as around BGN 40 for costs and expenses incurred in connection with the proceedings for damages. The applicant appealed to the Sofia City Court which, in a decision of 12 December 2005, raised the amount due to him for costs and expenses from BGN 40 to BGN 120 (about EUR 60).

The applicant obtained a writ of execution in February 2006. He presented it a month later to the Sofia Department of the Ministry of Interior, asking that the above-mentioned sums be paid to him. He also wrote to the Ministry of Interior on 15 November 2006, inquiring about the payment. In September 2010 the applicant informed the Court by letter that the compensation had not yet been paid to him.

On 20 August 2013, after the application had been communicated to the Government, the Sofia Directorate of the Ministry of Interior sent by postal order to the applicant the amount due to him on the basis of the final judgment in his favour.

COMPLAINTS

The applicant complained in particular under Article 6 § 1 that the final judicial decision in his favour was not enforced and under Article 13 of the Convention that he did not have an effective remedy in that respect.

The applicant also complained under Article 1 of Protocol No. 1 to the Convention that the Ministry of Interior did not pay to him the sum awarded in the final court decision of 12 December 2005 in his favour.

THE LAW

After the failure of attempts to reach a friendly settlement, by a letter of 3 December 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. The Government submitted a declaration on 2 April 2014 and an amended declaration on 10 October 2014.

The amended declaration provided in particular as follows:

> "...The Government hereby wish to express – by way of unilateral declaration – its acknowledgement of the delayed enforcement of the judgment in applicant's favour in the proceedings for damages under the SMRDA, which constitute a breach, within the meaning of Article 6 § 1 of the Convention, of the applicant's right to effective protection of his civil rights. The Government also express their acknowledgement of the lack of an effective domestic remedy at applicant's disposal in that respect, which constitutes a breach of Article 13 of the Convention.
>
> Consequently, the Government of Bulgaria are prepared to pay to Kotse Filipov Kotsev the amount of EUR 600 which they consider reasonable in the light of the Court's case-law. The sum referred to above, which is to cover any pecuniary and

> non-pecuniary damage as well as costs and expenses, will be converted into Bulgarian levs at the exchange rate applicable at the time of payment, and will be free of any taxes that may be chargeable to the applicant. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> The Government, therefore, request that this application be struck out of the Court's list of cases pursuant to Article 37 § 1 (c) of the Convention. The Government's acknowledgment of a violation of Article 6 § 1 and Article 13 of the Convention and its acceptance of the claim for compensation in the amount of EUR 600 constitute "[an]other reason" within the meaning of this provision."

The applicant did not comment on the declaration.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified, under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1(c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1(c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.) no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.) no. 28953/03).

The Court has established in a number of cases, including those brought against Bulgaria, its practice concerning complaints about the violation of Article 6 § 1 of the Convention as a result of the failure to enforce, or the delayed enforcement of, final judgments by virtue of which State institutions had to pay a sum of money to the applicants, as well as concerning complaints about the violation of Article 13 of the Convention as a result of the absence of an effective remedy in that connection (see, for example, *Burdov v. Russia (no. 2)*, no. 33509/04, § 86 and § 117, ECHR 2009; *Mancheva v. Bulgaria*, no. 39609/98, § 60, 30 September 2004; *Pashov and Others v. Bulgaria*, no. 20875/07, § 59, 5 February 2013).

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed - which is consistent with the amounts awarded in similar cases - the Court considers that it is no longer justified to continue the examination of the

application (Article 37 § 1(c)). Seeing that in essence the complaint made by the applicant under Article 1 of Protocol No. 1 to the Convention about the non-enforcement of the final judgment in his favour is the same as the one under Article 6 § 1 of the Convention, the acceptance by the Government that there has been a breach of Article 6 § 1 is sufficient for the Court to discontinue the examination of this application.

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declaration under Article 6 § 1 and Article 13 of the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1(c) of the Convention.

Done in English and notified in writing on 30 July 2015.

Fatoş Aracı
Deputy Registrar

Päivi Hirvelä
President