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

SECOND SECTION

DECISION

Application no. 2500/16
Mihaela MUHEDINOVA
against North Macedonia

The European Court of Human Rights (Second Section), sitting on 13 December 2022 as a Committee composed of:

Lorraine Schembri Orland*, President*,
Jovan Ilievski,
Diana Sârcu*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 2500/16) 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 31 December 2015 by Ms Mihaela Muhedinova ("the applicant"), a Macedonian/a citizen of the Republic of North Macedonia, born in 2014 and living in Bitola, who was represented by her parents, Mr M.M. and Ms Z.M., as well as Ms M. Sotiroska, a lawyer practising in Bitola;

the decision to give notice of the complaints concerning Article 14 taken in conjunction with Article 8 of the Convention and Article 1 of Protocol No. 12 to the Government of North Macedonia ("the Government"), represented by their acting Agent, Ms D. Djonova, 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 the applicant's complaints under Article 14 taken in conjunction with Article 8 of the Convention and under Article 1 of Protocol No. 12 that she had been excluded from receiving parental benefit on the grounds of the nationality of her mother. She also complained that the refusal

of the parental benefit had infringed her right to respect for her family life, in violation of Article 8 of the Convention.

A. Background

2. In February 2008 the Ministry of Labour and Social Policy adopted a strategy for demographic development of the respondent State for the period 2008-15. The specific measures and interventions aimed at increasing the birth rate and improving childcare included a financial incentive for married couples to have second and third children. That particular measure was implemented by way of amendments to the Children's Protection Act 2000 (*Закон за заштита на децата*, Official Gazette nos. 98/2000, 17/2003, 65/2004, 113/2005, 98/2008, 107/2008, 83/2009, 156/2009, 51/11 and 157/11) which provided that parental benefit could be granted to a mother for her second, third and fourth child born alive if the mother was a permanent resident in one of the municipalities where the rate of natural population growth had, according to statistical data from the State Statistical Office, been below 2.1% in the preceding year. Section 30-a(2) provided that the said right could be exercised by a mother who was a citizen of the respondent State and who had been a permanent resident of one of the relevant municipalities for at least three years before claiming the parental benefit.

3. After the Constitutional Court revoked the relevant section of that Act with its decision U.br.160/2008 dated 1 April 2009, a new Children's Protection Act 2013 (*Закон за заштита на децата* – Official Gazette nos. 23/13, 12/14 and 44/14) was passed, which, under section 38(1), provides that mothers who have at least three children are entitled to claim parental benefit. Under section 38(2), only mothers who are nationals of the respondent State and who have been permanently residing in the respondent State for three years before their application for the benefit is submitted are entitled to the benefit.

4. The applicant is the third child of Mr M.M. and Ms Z.M. The applicant's mother, Z.M., is a Bulgarian national who has been legally residing in the respondent State since 1998. In 2014 Z.M. married M.M., who is a national of the respondent State. They have three children, all of whom are Macedonians/citizens of the Republic of North Macedonia.

B. Administrative proceedings in respect of parental benefit

5. On 4 June 2014 the Centre for Social Work in Bitola rejected an application submitted by Z.M. for parental benefit (*родителски додаток за дете*). It pointed out that under section 38(2) of the Children's Protection Act (*Закон за заштита на децата* – Official Gazette nos. 23/13, 12/14 and 44/14), only mothers who were nationals of the respondent State were entitled to the benefit in question.

6. On 20 August 2014 the Ministry of Labour and Social Policy dismissed an appeal lodged by Z.M. against the above-mentioned decision. Z.M. subsequently challenged the Ministry's decision before the Administrative Court.

7. On 22 December 2014 the Administrative Court dismissed Z.M.'s action and held that she did not meet the statutory conditions laid down in the Children's Protection Act and in the Rulebook on the requirements, criteria and manner of exercising the right to one-off financial assistance for a newborn child and the right to parental benefit for a third child. The Court has not been informed whether that decision was appealed against in the High Administrative Court, and if so, of the outcome.

C. Complaint before the Commission for Protection from Discrimination

8. Z.M. and M.M. lodged a complaint with the Commission for Protection from Discrimination (*Комисија за заштита од дискриминација*). Z.M. complained that she had suffered discrimination on the grounds of her nationality, in contrast to other mothers who received the parental benefit in question. M.M. complained of discrimination on the grounds of his gender, as he was not entitled to parental benefit even though he also exercised parental duties and responsibilities in bringing up his child.

9. On 28 November 2014 the Commission for Protection from Discrimination issued an opinion, holding that Z.M. and M.M. had not suffered discrimination in relation to entitlement to parental benefit. It considered that the said benefit represented an affirmative policy measure and that it was aimed at supporting mothers who were responsible for the care and upbringing of their children.

D. Civil proceedings for discrimination

10. The applicant, through her parents who acted as her legal representatives, lodged a civil claim with the Bitola Court of First Instance, complaining that her right to equal treatment had been violated in that she had been subjected to discrimination on account of her exclusion from parental benefit on the grounds of her mother's nationality, as compared with children whose mothers were nationals of the respondent State. She relied on, *inter alia*, Article 9 of the Constitution, as well as on Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention.

11. On 18 May 2015 the Bitola Court of First Instance dismissed the applicant's claim. It held that she had not suffered discrimination, as her mother had failed to meet the statutory requirements relating to nationality for obtaining parental benefit. The court further held that the applicant lacked standing to lodge a claim (*нема активна легитимација*) because the

impugned administrative decisions had concerned her mother and because she herself was not a beneficiary of the said benefit.

12. On 17 September 2015 the Bitola Court of Appeal dismissed the applicant's appeal and upheld the first-instance judgment in its entirety.

THE COURT'S ASSESSMENT

13. The applicant complained that she had been denied parental benefit on discriminatory grounds. She relied on Article 14 taken in conjunction with Article 8 of the Convention and on Article 1 of Protocol No. 12. The applicant also complained under Article 8 of the Convention that the refusal of parental benefit constituted a violation of her right to respect for her family life.

14. Since the alleged discriminatory treatment of the applicant lies at the heart of her complaint, having regard to the circumstances of the present case, and bearing in mind that it is master of the characterisation to be given in law to the facts of a complaint (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers it appropriate to examine the applicant's grievances only from the standpoint of Article 14 of the Convention taken in conjunction with Article 8.

15. The Court considers that it is not necessary to examine the preliminary objections raised by the Government, as the present case is in any event inadmissible for the following reasons.

16. The general principles regarding the applicant's complaint under Article 14 taken in conjunction with Article 8 of the Convention were set out in *Yocheva and Ganeva v. Bulgaria*, nos. 18592/15 and 43863/15, §§ 100-105, 11 May 2021.

17. Turning to the present case, the Court first has to establish whether there has been a difference in treatment between the applicant who has a mother that is not a national of the respondent State and any other child that has a mother who is a national of the respondent State. The Court notes in this connection that according to section 38 of the Children's Protection Act 2013 (see paragraph 3 above), the parental benefit was granted to mothers who had at least three children (see, conversely, *Weller v. Hungary*, no. 44399/05, § 37, 31 March 2009, in which the Court considered that the maternity benefit in question had actually been a family benefit to which other family members had been entitled to). The Court considers that there is no indication, nor did the applicant argue, that children were considered under the law to be beneficiaries of the said benefit. The applicant's mother had applied for it and was refused the parental benefit (see paragraphs 5-7 above) as she did not meet the statutory requirements.

18. The Court further notes that it was established by the domestic courts in the civil proceedings which the applicant had instituted in her own name that the applicant did not have legal standing as she was not a holder of the

right to claim the parental benefit in question (see paragraphs 11 and 12 above). Thus, her right to claim that benefit was never recognised on the domestic level. Moreover, there is nothing in the case file explaining why the applicant's mother herself did not bring civil proceedings for discrimination at domestic level or submit an application before the Court.

19. The foregoing considerations are sufficient to enable the Court to conclude that in the circumstances of the present case there has been no difference in treatment of the applicant on the basis of her mother's nationality, because the applicant herself would not have had a right to the parental benefit in question even if her mother had been a national of the respondent State. Her complaint under Article 14 in conjunction with Article 8 is therefore manifestly ill-founded and should be rejected under 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 19 January 2023.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President