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

# THIRD SECTION

# DECISION

Application no. 10351/18
Kornelia Petrova NINOVA
against Bulgaria

The European Court of Human Rights (Third Section), sitting on 5 March 2024 as a Chamber composed of:

Pere Pastor Vilanova, *President*,
Jolien Schukking,
Yonko Grozev,
Georgios A. Serghides,
Peeter Roosma,
Ioannis Ktistakis,
Andreas Zünd, *judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the above application lodged on 19 February 2018,

the decision to (a) give the respondent Government notice of the applicant's complaints concerning the alleged interference with her right to freedom of expression and the alleged lack of an effective remedy in that regard, and (b) declare the remainder of the application inadmissible; and the observations and additional observations submitted by the respondent Government and the observations and additional observations submitted by the applicant,

Having deliberated, decides as follows:

## THE FACTS

1. The applicant, Ms Kornelia Petrova Ninova, is a Bulgarian national who was born in 1969 and lives in Sofia. She was represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv.

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

3. The facts of the case, as submitted by the parties and as emerging from the documents submitted by them and from publicly available material, may be summarised as follows.

## A. Background

4. Since May 2016, when the applicant was elected as Chair of the National Council of the Bulgarian Socialist Party, she has been that party's leader. She has been a member of the National Assembly (the Bulgarian Parliament) for that party since 2009.

5. At the parliamentary elections in March 2017 the coalition led by the Bulgarian Socialist Party, BSP for Bulgaria, obtained eighty out of the two hundred and forty seats in the Assembly.

6. GERB (Citizens for European Development of Bulgaria), the political party which had obtained the most seats in those elections, ninety-five, was joined by a coalition, United Patriots, which had obtained twenty-seven seats, and in May 2017 the resulting greater coalition formed a government led by Mr Boyko Borisov.[1]

7. The Bulgarian Socialist Party thus became the main opposition party in that (forty-fourth) Assembly. The applicant became the head of the parliamentary group of its coalition, BSP for Bulgaria. Two more political parties were represented in that Assembly: the Movement for Rights and Freedoms and Volya.

8. At its first plenary sitting in April 2017, the Assembly elected its Speaker – Mr D.G., a member from GERB, and five Deputy Speakers – one from each of the five parliamentary groups (see paragraph 26 below).

9. At the plenary sitting on 10 November 2017, in the course of a speech which she was making from the rostrum of the Assembly chamber and in which she was commenting on the Prime Minister's failure to attend Assembly sittings, she stated that the Prime Minister was systematically infringing the Constitution and the laws of the country, was systematically destroying its institutions, and was a coward. In a reply to that statement, the Speaker, Mr D.G. (who stepped down from the Speakers' platform to take the floor), read out the text of Rule 162 § 1 (1) of the Assembly Rules (see paragraph 34 below), and stated that he would later review the video recording of the sitting and consider whether he should apply that provision to the applicant. He then took a seat down at the benches with the other Assembly members from GERB's parliamentary group, and one of the Deputy Speakers, Ms T.K., elected from GERB's parliamentary group (see paragraph 8 above), took over the presiding of the sitting.

[1] GERB had been the main ruling party also between July 2009 and March 2013 and between November 2014 and January 2017, and Mr Borisov had been Prime Minister during those two periods as well.

## B. The applicant's exclusion from the sitting on 15 November 2017

10. On 12 November 2017 the Prime Minister said the following during a media interview:

> "... at the same time, there are still people in Parliament who have been involved in drug trafficking, people who have bought votes, moreover from prisoners, people who call the Bulgarians 'morons'."

11. The Government explained in their observations, with reference to two media articles, that the two people to whom that statement referred were at the time Assembly members from the Bulgarian Socialist Party.

12. At the plenary sitting on 15 November 2017 three Assembly members from the parliamentary group of BSP for Bulgaria proposed that the Prime Minister be summoned to the Assembly to explain his words (the applicant had stated at a press conference the previous day that the Bulgarian Socialist Party would make such a proposal). The proposal was put to a vote twice. The first time it was rejected by ninety-seven votes to ninety-one, with five abstentions, and the second time it was rejected by one hundred and one votes to ninety-three, with three abstentions.

13. After the vote, the applicant was given the floor to make a declaration on behalf of her parliamentary group.

14. The relevant part of the verbatim record of the sitting reads:

> "**[The applicant] (BSP for Bulgaria)**: Mr Speaker, ladies and gentlemen, members from GERB and United Patriots! Are you aware of what you are doing with your voting and conduct in relation to our proposal to hear the Prime Minister?! The Prime Minister of Bulgaria, whoever he might be, asserts publicly [that] there are people in the Bulgarian National Assembly who engage in drug trafficking and buy votes from prisoners. And you excuse this statement with the reading of newspapers?! What does that mean? Firstly, I note, and it is none of our business, but I ask you to think about it: why are you subjecting yourself to this humiliation for the sake of this man? Do you not have the dignity of members of Parliament, whom this same man called idlers?
>
> **Speaker [D.G.]**: Ms Ninova! In the course of the previous sitting [see paragraph 9 above] I warned you that I would apply strictly the requirements of ...
>
> **[The applicant]**: He called the Parliament idlers.
>
> **Speaker [D.G.]**: ... the [Rules of the Assembly]. Please choose your expressions!
>
> **[The applicant]**: I am quoting the Prime Minister, who said that we are idlers, without specifying who. Does that not concern you, colleagues? Secondly, do you not permit criminal convictions to be handed down this way – in advance, similar to the one that [a former Minister of Internal Affairs] pronounced against the medical doctors? And Bulgaria was condemned for that! And the whole Bulgarian people is paying for that! What is this? A total violation of the principles of the rule of law, under which no one has the right to hand down criminal convictions until the Bulgarian court has ruled. Thirdly, why do you allow a Bulgarian Prime Minister, whoever he is – if some day he is from another political party, I will address you in the same way: do not allow a Bulgarian Prime Minister to destroy totally the institutions in Bulgaria. In the parliamentary republic ...

**Speaker [D.G.]**: Ms Ninova! You no longer have the floor and ...

**[The applicant]**: ... where the parliament is the most ...

**Speaker [D.G.]**: ... on the basis of Rule 162 § 1 [see paragraph 34 below] I am excluding you from the sitting! (*Noise, interjections, exclamations from 'BSP for Bulgaria'*) Quaestors, please! Ms Ninova, I am excluding you on the basis of Rule 162 § 1 of the Rules – from one sitting.

**[The applicant]**: What have I infringed?

**Speaker [D.G.]**: I warned you several times.

**[The applicant]**: What have I infringed?

**Speaker [D.G.]**: Did you not hear what you were saying?! (*the Speaker [D.G.] turns off the microphone. The member Kornelia Ninova continues to speak with her microphone turned off. Knocking on the banks from 'BSP for Bulgaria' and shouts: 'Resign'!*)

Pursuant to Rule 162 § 1 of the Rules [of the Assembly] ... (*chanting from 'BSP for Bulgaria': 'Resign!'*) the Speaker can exclude you from more than one sitting – I will exclude you from one only (*the member Kornelia Ninova speaks with her microphone turned off*) – but no more than three sittings, which I do not do. A member who insults the National Assembly, the members of the Council of Ministers and ... (*the member Kornelia Ninova speaks with her microphone turned off. Noise, banging on the banks from 'BSP for Bulgaria'. Members from 'BSP for Bulgaria' approach the rostrum*)

Please, Ms Ninova! Ms Ninova, please! (*the member Kornelia Ninova does not wish to step away from the rostrum*) Please, Ms Ninova!

**[A.K.] (BSP for Bulgaria, away from the microphones)**: Resign! Today you are no longer fit for here!

**Speaker [D.G.]**: Mr [A.K.]! Mr [A.K.], I suspend you for two sittings on the basis of Rule 162 § 1! (*Applause from GERB. Loud noise and interjections from the members from 'BSP for Bulgaria', who continue to stand around the rostrum*)

Quaestors, please! Quaestors, please bring order to the chamber!

You categorically cannot say whatever you wish, even in a declaration! You cannot say whatever you wish! (*the member Kornelia Ninova continues to stand behind the rostrum and speaks with her microphone turned off*)

There is a way to request a resignation. Please, you know where the registry is, you are welcome to do so! (*Remarks from the member [A.K.]*)

Mr [K.]! Mr [K.]! Ms Ninova, step away from the rostrum and leave the chamber! Step away from the rostrum and leave the chamber! It is not only you who cannot say whatever you wish in a declaration! There are Rules [of the Assembly]. I am sorry! I am sorry! (*Members from 'BSP for Bulgaria' stand around the rostrum; loud noise and remarks*)

Mr [S.] and all others who are not sitting in your seats, go back to your seats! Ms Ninova, leave the chamber! You are not at a plenary meeting of the Bulgarian Socialist Party! (*Exclamations from 'BSP for Bulgaria': 'Eee!' Applause from GERB*)

> Dear fellow members from 'BSP for Bulgaria', take your seats! Ms Ninova, leave the chamber! You are not at a plenary meeting of [the Bulgarian Socialist Party]. I say this especially for you, Ms Ninova! Leave the chamber! A ten-minute recess until Ms Ninova leaves the chamber. I am convening an extraordinary Speaker's Council during the recess."

15. At that point, all Assembly members from BSP for Bulgaria left the sitting; they did not return to it when it was resumed. Shortly after the recess ended, the Assembly members from another party – the Movement for Rights and Freedoms – also left the sitting.

16. The members of the Speaker's Council from BSP for Bulgaria – the Deputy Speaker from its parliamentary group, and the applicant, who was the head of that parliamentary group (see paragraphs 7-8 above and paragraph 27 below), did not attend the extraordinary meeting of that council held during the recess.

## C. Aftermath

### *1. The applicant's immediate reaction to the incident*

17. In interviews she gave shortly after the incident before journalists present in the Assembly building, the applicant said that she would immediately call a meeting of her parliamentary group to discuss the prospect of calling for the Speaker's resignation. Following a brief discussion within the parliamentary group, the applicant's deputy confirmed that they would be formally requesting that resignation.

### *2. Variation of the disciplinary measure taken with respect to Mr A.K.*

18. At the outset of the plenary sitting the following day, 16 November 2017, the Speaker announced that, having reviewed the verbatim record of the previous day's sitting, he had decided to vary the measure imposed on Mr A.K. (see paragraph 14 *in fine* above) to exclusion from one sitting only, rather than two, and that Mr A.K. could thus be invited to attend the sitting.

### *3. Public statements by the head of GERB's parliamentary group*

19. In a television interview the following day, 16 November 2017, the head of GERB's parliamentary group said, *inter alia*, that at the extraordinary meeting of the Speaker's Council held during the recess which had followed the applicant's exclusion (see paragraph 14 *in fine* above), its members from BSP for Bulgaria had been absent, and that after the meeting the members from GERB had suggested to them to lodge a challenge against the Speaker's decision to exclude the applicant, as envisaged in the Assembly Rules. The head of GERB's parliamentary group expressed his confidence that such a challenge would have been examined immediately, and that the disciplinary

measures taken with respect to the applicant and Mr A.K. would have been quashed before the Assembly would resume its activities.

*4. Resignation of the Speaker and election of a new Speaker*

20. On 16 November 2017 eighty-eight Assembly members, including the applicant, proposed that the Speaker be removed from his post in connection with his conduct the previous day. The proposal was included in the Assembly's order of business for the following day, 17 November 2017, but before it could be debated and voted on, the Speaker resigned.

21. The Speaker announced his resignation at the outset of the plenary sitting on 17 November 2017. He stated that he had acted in line with the Rules of the Assembly, and that his resignation was a moral act meant to restore normality at the sittings of the Assembly. In a declaration on behalf of GERB's parliamentary group made immediately after that, its head stated, *inter alia*, that the Speaker's decision to exclude the applicant – the leader of the largest opposition party – from a sitting had indeed given the impression that the majority were trying to supress or restrict the rights of Assembly members from the opposition, and that this had not been the intention of GERB's parliamentary group or of the Speaker. In a declaration which the applicant then made on behalf of her parliamentary group, she stated that the Speaker's decision to resign had been inevitable and correct, and also a bitter lesson for the entire political class, in particular the ruling majority, that in a State having the rule of law it was normal for there to be a governing majority and an opposition, for them to have differing views, and for there to exist freedom of expression and respect for each other's positions. The Movement for Rights and Freedoms and Volya also welcomed the Speaker's resignation.

22. The same morning at GERB's proposal the Assembly elected a new Speaker – Ms T.K., the Deputy Speaker from GERB (see paragraph 9 *in fine* above), who upon taking up her duties stated that she would see to it that all Assembly members were treated equally.

## RELEVANT LEGAL FRAMEWORK

23. By Article 73 of the 1991 Constitution of Bulgaria, the organisation and business of the National Assembly are governed by the Constitution itself and by rules adopted by the Assembly. The forty-fourth Assembly, whose term began in April 2017 and ended in March 2021, adopted its rules in April 2017, and they came into force in May 2017.

### A. The Assembly's Speaker and the Speaker's Council

24. By Article 77 § 1 and Article 78 of the Constitution, the functions of the Assembly's Speaker include (a) representing the Assembly, (b) proposing

the order of business for its plenary sittings, and (c) presiding over those plenary sittings and ensuring their orderly conduct.

25. The Deputy Speakers assist the Speaker and carry out the functions which he or she has delegated to them (Article 77 § 2 and Rule 8 § 2).[2] They preside the Assembly alongside the Speaker, and he or she fixes which ones among them do so each week (Rule 8 § 3). One of the Deputy Speakers presides over the plenary sitting whenever the Speaker steps down to take part in the parliamentary debates (Rule 8 § 6).

26. The Speaker and the Deputy Speakers must be elected at the first plenary sitting of each new Assembly (Article 76 § 3 and Rules 3 § 1 and 4 §§ 1 and 2). Ever since 1991, when the current Constitution was adopted, the tradition in Bulgaria has been for each parliamentary group to have one Deputy Speaker – a position enshrined in special rules adopted by each successive Assembly in 1991, 1995, 1997, 2001, 2005, 2009, 2013, 2014, 2017, 2021 and 2022. At the relevant time, the forty-fourth Assembly had five Deputy Speakers: one from the parliamentary group of GERB, one from the parliamentary group of BSP for Bulgaria, one from the parliamentary group of United Patriots, one from the parliamentary group of Movement of Rights and Freedoms, and one from the parliamentary group of Volya (see paragraphs 6-7 above).

27. The Speaker is assisted by a Speaker's Council, which consists of the Deputy Speakers and of the heads of all parliamentary groups or their duly authorised deputies (Rule 9 § 1). Its tasks include smoothing out conflicts between parliamentary groups and achieving agreement on various procedural or organisational points (Rule 9 § 2 (3)). The Speaker's Council is to be convened by the Speaker at his or her own initiative, or at the request of one third of its members (Rule 9 § 3).

### B. Assembly members' conduct during proceedings and measures to tackle misconduct by Assembly members

28. By Rule 155 § 1 of the Rules, the conduct of Assembly members had to be based on respect for the Assembly's authority and towards other members and all other people, and was not to impede normal parliamentary business or order in the Assembly building.

29. By Rule 155 § 2, Assembly members could not make personal attacks or use insulting words, gestures or threats towards anyone, or act in an undignified manner or a manner disrupting the order of the sitting.

30. Failure to comply with these rules of conduct could be sanctioned with (a) a warning, (b) an admonishment, (c) a reprimand, (d) withdrawal of the right to speak, (e) exclusion from one sitting, and (f) exclusion from three sittings (Rule 156).

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[2] All references are to the Rules of the forty-fourth Assembly (see paragraph 23 above).

31. A warning could be given to a member straying from the topic under discussion (Rule 157). An admonishment could be given to a member using insulting words or gestures or making threats to other members (Rule 158). A reprimand could be given to a member disrupting the order of the sitting or acting in a disorderly manner (Rule 159).

32. The right to speak could be withdrawn from a member who had already been given two warnings, admonishments or reprimands, or who kept on speaking after the expiration of the allotted time despite an invitation to yield the floor (Rule 160).

33. A member could be excluded from one sitting if he or she (a) objected against another disciplinary measure in a rude and undignified manner, (b) continuously prevented normal parliamentary business, or (c) had voted with another member's electronic card (Rule 161).

34. A member could be excluded for more than one but not more than three sittings if he or she (a) insulted the Assembly, members of the Council of Ministers, the President or the Vice-President of the Republic, or other State authorities (Rule 162 § 1 (1)), or (b) called for, or engaged in, violence in the Assembly chamber or building (Rule 162 § 1 (2)).

35. All those measures could be taken by the Speaker or by the Deputy Speaker exercising his or her functions during the respective plenary sitting (see paragraph 25 above) (Rules 157 to 162 § 1 read in conjunction with paragraph 3 of the Rules' additional provisions).

36. Assembly members excluded from a sitting or sittings received no pay in respect of the sitting(s) from which they had been excluded (Rule 162 § 2).

### C. Legal challenge against the exclusion from a sitting

37. The Assembly member could challenge his or her exclusion from a sitting or several sittings before the Speaker within three days, and the Speaker's Council (see paragraph 27 above) could then confirm, quash or vary the measure by way of a reasoned decision (Rule 162 § 3). The administrative courts have held that the decision of the Speaker's Council on the point is not amenable to judicial review, because it concerns matters internal to the Assembly (see *прот. опр. № 50 от 24.03.2016 г. по адм. д. № 878/2016 г., АдмС-София*, upheld by *опр. № 5471 от 10.05.2016 г. по адм. д. № 5023/2016 г., ВАС, IV о.*).

38. The rules of all Assemblies since 2001 have contained a provision identical or nearly identical to Rule 162 § 3. The only material difference, until late 2014, was that the power to confirm, quash or vary the Speaker's decision to exclude a member was vested in the Speaker him- or herself. That power was given to the Speaker's Council for the first time in the rules of the forty-third Assembly, adopted in November 2014. When that Assembly's Speaker put the proposal (by a member) to amend the provision in that manner to a vote, she stated that she supported the new wording because it

would preclude the Speaker from reviewing his or her own decision. That has remained the position in the rules of all subsequent Assemblies.

39. The information available on the Assembly's website[3] shows that during the course of the forty-fourth Assembly, seven members (including the applicant and Mr A.K. on 15 November 2017) were excluded from sittings. Four of those decisions concerned members from BSP for Bulgaria, and three members from United Patriots (see paragraphs 6-7 above). There is no indication that any of those members sought to challenge the measures under Rule 162 § 3. It appears that the only challenge by an Assembly member against a disciplinary measure was made in relation to an admonishment given on 29 November 2017, and on that occasion the measure was confirmed. Nor does it appear that members challenged disciplinary measures against them in the previous, forty-third Assembly, or in subsequent Assemblies. No information on this point is available in relation to previous Assemblies.

## COMPLAINTS

40. The applicant complained under Article 10 of the Convention that the Speaker had deprived her of the possibility to continue speaking from the rostrum and had excluded her from the remainder of the plenary sitting on 15 November 2017 on account of the remarks that she had made in the course of that sitting.

41. The applicant also complained under Article 13 of the Convention that she had not had an effective remedy in respect of the alleged breach of Article 10 of the Convention since the Speaker's decision could only have been challenged before the Speaker's Council.

## THE LAW

### A. Complaint under Article 10 of the Convention

42. In respect of her complaint that she had been deprived of the possibility to continue speaking from the rostrum and had been excluded from the remainder of the plenary sitting on 15 November 2017 on account of remarks that she had made in the course of that sitting, the applicant relied on Article 10 of the Convention.

[3] https://www.parliament.bg/bg/mp_penalty (last accessed on 5 March 2024)

43. That provision reads, so far as relevant:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

44. The first question which arises in relation to this complaint is whether it is inadmissible for non-exhaustion of domestic remedies.

*1. The parties' submissions on the point*

**(a) Initial submissions by the Government**

45. In their initial observations, the Government submitted that the applicant had failed to exhaust domestic remedies, since she had not challenged the disciplinary measure imposed on her under Rule 162 § 3 of the Rules of the National Assembly (see paragraph 37 above). In the Government's view, that was an effective remedy. If the applicant had resorted to it, she could have argued that the measure had not pursued a legitimate aim or had been arbitrary or disproportionate to any such aim, and even relied directly on Article 10 of the Convention. The remedy, which only required the filing of a written request with the Assembly's registry, had been used once in the course of the forty-fourth Assembly.

46. The Government also pointed out that even Assembly members from GERB had suggested that the measure imposed on the applicant should be challenged, noting that the Speaker should have showed more tolerance, and had unambiguously promised a favourable resolution and even an apology.

**(b) Initial submissions by the applicant**

47. In her initial observations, the applicant argued that the remedy cited by the Government was ineffective, for three reasons:

(a) It had no suspensive effect. Thus, even if she had brought the challenge under Rule 162 § 3 of the Rules of the National Assembly immediately, the Speaker could not have interrupted the sitting (whose order of business had been set in advance) and called a meeting of the Speaker's Council to decide on the challenge before the end of the sitting. Since the applicant had been excluded from one sitting only, the remedy would have hence been incapable of overturning that penalty before it had been effectively served;

(b) Even if she had managed to have the penalty quashed, she would not have been entitled to monetary compensation, a public apology or another form of moral redress for the reputational damage she had suffered;

(c) The Speaker's resignation had been incapable of remedying her public embarrassment. He had not stated that he was resigning because he had erred by excluding her from the sitting, or apologised to her or her political party. His resignation had been motivated by the wish to induce Assembly members from that party to resume their attendance at sittings at a time when the Assembly was preparing for a high-level visit by the European Commission. Neither that resignation nor the statements by Assembly members from GERB had been meant as an apology or an attempt at political reconciliation. Most of those members had maintained that the Speaker had fallen victim to the applicant's scandalous conduct and her party's confrontational attitude.

#### (c) Additional submissions by the Government

48. In their additional observations, the Government pointed out that the Speaker had announced a recess immediately after sanctioning the applicant. At the extraordinary meeting of the Speaker's Council held during that recess, all attending members had been in favour of revoking the penalty with immediate effect. However, the Deputy Speaker from the applicant's party and the head of its parliamentary group (the applicant) had refused to participate in that meeting, and had thus prevented the Speaker's Council from voting on any possible legal challenge by the applicant. Moreover, when subsequently resigning the Speaker had stated that this was a moral act. That statement, taken together with those by the head of GERB's parliamentary group and the new Speaker, left no doubt that GERB had meant to respect the applicant's freedom of expression.

#### (d) Additional submissions by the applicant

49. In her additional submissions, made in response to the Government's additional observations, the applicant stated that the Government's arguments failed to take into account the political context and the symbolism attaching to a possible legal challenge by her against the Speaker's decision. It had to be borne in mind in that connection that she was the leader of the largest opposition party, and that her ostentatious exclusion from the sitting had been seen by the public as a demonstration of force by the majority. The reputational damage caused by that exclusion had materialised immediately after it had become known to the public. A legal challenge could thus be perceived as a display of weakness, subordination and dependence, as a sort of a humiliating plea for a political opponent's grace. It was crucial in that regard that the challenge would have had to be heard by a body chaired by that opponent. It would have hence been politically and reputationally

unacceptable, and simply deepened the harm to the applicant's and her political party's image.

*2. The Court's assessment*

**(a) General principles**

50. The general principles governing the requirement in Article 35 § 1 of the Convention to exhaust domestic remedies were recently restated in *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, §§ 138-43, 27 November 2023). There is no need to repeat all of them here; it is only necessary to highlight two further points:

(a) Applicants are only required to resort to domestic remedies which, if successful, can adequately redress their complaints under the Convention or the Protocols thereto (see, by way of example, *Van Oosterwijck v. Belgium*, 6 November 1980, § 29, Series A no. 40, and *Dimcho Dimov v. Bulgaria (no. 2)*, no. 77248/12, § 54, 29 June 2017).

(b) The application of the exhaustion rule must take realistic account not only of the formal existence of remedies in the legal system of the Contracting State concerned, but also of the general legal and political context in which those remedies operate and the applicant's personal circumstances (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 69, *Reports of Judgments and Decisions* 1996-IV; *Selmouni v. France* [GC], no. 25803/94, § 77, ECHR 1999-V; and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 116, ECHR 2007-IV).

**(b) Application of those principles**

*(i) Adequate redress*

51. The first question is whether the remedy cited by the Government – a challenge against the Speaker's decision under Rule 162 § 3 of the Rules of Bulgaria's National Assembly (see paragraph 37 above) – could have afforded the applicant adequate redress.

52. On this point, it should be noted that the Court has already emphasised, though in a somewhat different context, the need for members of Parliament to be able to challenge disciplinary measures imposed on them, and has found that the possibility of doing so before a parliamentary body capable of overturning those measures is sufficient in that respect (see *Karácsony and Others v. Hungary* ([GC], nos. 42461/13 and 44357/13, §§ 154 and 160, 17 May 2016). The Court has also held that the procedural safeguards available in respect of immediate sanctions (such as a denial of the right to speak or exclusion from a sitting, which instantaneously prevent a member of Parliament from expressing his or her opinion) and *ex post facto* sanctions may differ (ibid., § 155).

53. In the present case, it was open to the applicant to challenge the Speaker's decision to exclude her from the sitting immediately after it was

made. It should be noted in this connection that right after he excluded her from the sitting, the Speaker announced a recess during which he called an extraordinary meeting of the Speaker's Council (see paragraph 14 *in fine* above). It was thus not impossible for the applicant to obtain an examination of a challenge against the Speaker's decision before the sitting was resumed. It was open to the Speaker's Council to quash the measure (see paragraph 37 above). Such a decision would have enabled the applicant to take part in the remainder of the sitting. From the perspective of Article 10 of the Convention, such an outcome – with its explicit or at least implicit acknowledgement that the Speaker's decision to deprive the applicant of the possibility to continue speaking from the rostrum and to exclude her from the remainder of the sitting had been unjustified – would have in the circumstances been sufficient in terms of redress. It should be noted in that connection that the right guaranteed under Article 10 of the Convention is not to untainted political standing, but to freedom of expression.

*(ii) Prospect of success*

54. The second question is whether the remedy had a sufficient prospect of success. It is apparently used infrequently (see paragraph 39 above). Nor has the Court been provided with examples showing that it has been employed successfully in a situation comparable to that of the applicant – which could of course be explained simply by the absence of such challenges (see, *mutatis mutandis*, *Gherghina v. Romania* (dec.) [GC], no. 42219/07, § 100, 9 July 2015). At the same time, nothing suggests that such a challenge would have been obviously futile.

55. Until late 2014, such challenges were to be examined by the Speaker him- or herself (see paragraph 38 above), and the Speaker would thus be required to review single-handedly his or her own decision. But that is no longer the case: since late 2014, challenges by Assembly members against decisions of the Speaker to exclude them from a sitting fall to be examined by a collective body – the Speaker's Council. At the relevant time, that body had eleven members: the Speaker, the five Deputy Speakers (one from each parliamentary group – see paragraphs 8 and 26 above), and the heads of the five parliamentary groups (one of whom was the applicant herself – see paragraph 7 above) or their duly authorised deputies (see paragraph 27 above). The Speaker's possible influence on the decisions taken by that body was thus bound to be quite limited, and certainly not decisive (contrast, *mutatis mutandis*, *Kayasu v. Turkey*, nos. 64119/00 and 76292/01, § 121, 13 November 2008, and *Kozan v. Turkey*, no. 16695/19, § 79, 1 March 2022).

56. It is true that the Speaker's Council was composed of people whose political leanings could influence the manner in which they would approach a challenge by the applicant. However, it cannot automatically be presumed that that body's decision would be driven chiefly by political rather than legal considerations. None of those people appear to have had interests directly

opposed to that of the applicant (contrast, *mutatis mutandis*, *Mugemangango v. Belgium* [GC], no. 310/15, § 106, 10 July 2020). Moreover, in the specific domain under consideration the body's composition cannot be seen as decisively undermining the remedy's prospect of success. In many of the Contracting States whose laws envisage at all a possibility for members of Parliament to challenge measures imposed on them for disorderly conduct during sittings, the remedy consists – as it does in Bulgaria – in an internal objection procedure (see *Karácsony and Others*, cited above, § 61). Such a procedure inevitably needs to involve a decision by members of Parliament, who cannot be politically neutral by definition (see *Mugemangango*, cited above, § 98). It has nonetheless been held by the Court to be sufficient in that context (see *Karácsony and Others*, cited above, §§ 154 and 160, and *Ikotity and Others v. Hungary*, no. 50012/17, § 38, 5 October 2023). Indeed, the Court recently confirmed that the rules on the internal functioning of national parliaments fall within the Contracting States' margin of appreciation as an aspect of parliamentary autonomy (see *Mugemangango*, cited above, § 74). It should also be noted in that connection that the membership of the Speaker's Council was quite balanced, with all parliamentary groups, including the opposition, being represented (see, *mutatis mutandis*, *Klass and Others v. Germany*, 6 September 1978, § 56, Series A no. 28, and *Ikotity and Others*, cited above, § 37).

57. There were, in addition, specific indications that the members of the Speaker's Council from GERB supported a favourable and quick decision on a challenge by the applicant (see paragraphs 19 and 21 above).

58. Mere doubts about the prospects of a remedy which is not obviously futile are not a valid reason for not resorting to it.

*(iii) Examination of the substance of the complaint*

59. It can also be accepted that the remedy would have permitted an examination of the substance of the complaint raised by the applicant before the Court. The discussions following the Speaker's decision suggest that it was plain to all concerned that it had interfered with the applicant's freedom of expression, and that the key question was whether that had been justified in the circumstances (see paragraphs 19 and 21 above). That is also apparent from the entire context of the case. The absence of a previous decision along those lines by the Speaker's Council does not in itself suggest that the possibility of having such arguments taken into account by it was merely illusory – that could well have been due to the absence of such challenges under Rule 162 § 3 of the Rules of the Assembly or its predecessor provisions (see paragraph 39 *in fine* above, and compare, *mutatis mutandis*, *Stefanov v. Bulgaria* (dec.), no. 51127/18, § 80 *in fine*, 8 September 2020).

*(iv) Were there special circumstances absolving the applicant from the need to have recourse to that remedy?*

60. Nothing in the applicant's personal circumstances or in the general legal and political context of the case appears to have prevented her from having recourse to that remedy. The fact that she did not regard such a course of action as politically and reputationally expedient owing to the symbolism attaching to it and the manner in which it could be perceived by the public (see paragraph 49 above) cannot be seen as a valid consideration under the exhaustion rule in Article 35 § 1 of the Convention (see, *mutatis mutandis*, *Austria v. Italy*, no. 788/60, Commission decision of 11 January 1961, Yearbook 4, p. 116, at p. 168 *in fine*).

*(v) Conclusion*

61. This complaint must therefore be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

**(c) Other admissibility issues**

62. In view of the above conclusion, there is no need to examine the Government's further objections that the Speaker's resignation (see paragraph 20 above) had deprived the applicant of her victim status and that the complaint was manifestly ill-founded (see, *mutatis mutandis*, *Azinas v. Cyprus* [GC], no. 56679/00, § 43, ECHR 2004-III; *Gherghina*, cited above, § 117; and *Dupré v. France* (dec.), no. 77032/12, § 19, 3 May 2016).

## B. Complaint under Article 13 of the Convention

63. With regard to her complaint that she had not had an effective remedy in respect of the alleged breach of Article 10 of the Convention, the applicant relied on Article 13 of the Convention.

64. That provision reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

### *1. The parties' submissions*

65. The Government submitted that the applicant had had no arguable claim, and that, in any event, an effective remedy had been available to her.

66. The applicant made no submissions in relation to this complaint.

### *2. The Court's assessment*

67. It was already established that the applicant had at her disposal an apparently effective domestic remedy with regard to her complaint under

Article 10 of the Convention (see paragraphs 50-61 above). In view of the close affinity between Article 35 § 1 and Article 13 of the Convention, that finding is equally valid with regard to the present complaint (see, among other authorities, *Stefanov*, cited above, § 87).

68. It follows that this complaint 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 28 March 2024.

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| Olga Chernishova<br>Deputy Registrar | Pere Pastor Vilanova<br>President |