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

THIRD SECTION

DECISION

Application no. 31239/11
Erdzhan Yusein RASHID
against Bulgaria

The European Court of Human Rights (Third Section), sitting on 4 July 2023 as a Committee composed of:

Ioannis Ktistakis*, President*,
Yonko Grozev,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 31239/11) 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 28 April 2011 by a Bulgarian national, Mr Erdzhan Yusein Rashid, who was born in 1968 and lives in Kardzhali ("the applicant"), and who was represented by Mr M. Ekimdzhiev and Mrs S. Stefanova, lawyers practising in Plovdiv;

the decision to give notice of the complaints concerning access to court and the forfeiture of the applicant's assets as proceeds of crime to the Bulgarian Government ("the Government"), represented by their Agent, Ms R. Nikolova from the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns proceedings which resulted in the forfeiture of assets of the applicant as proceeds of crime. In 2004 the applicant was convicted for having organised unlawful gambling, and in 2006 the Commission for Uncovering Proceeds of Crime (hereinafter "the Commission") opened proceedings against him under the Forfeiture of Proceeds of Crime Act 2005

(hereinafter "the 2005 Act", see for more detail *Todorov and Others v. Bulgaria*, nos. 50705/11 and 6 others, §§ 90-103, 13 July 2021).

2. In a judgment of 1 August 2008 the Kardzhali Regional Court allowed the Commission's forfeiture application and ordered the confiscation of assets of the applicant assessed to be worth 1,719,073 Bulgarian levs (BGN), the equivalent of about 880,000 euros (EUR). The applicant lodged an appeal, but did not pay the court fee due for that purpose, and the appeal was not examined on the merits; the discontinuation of the proceedings became final on 2 November 2010. The court fee at issue, calculated in accordance with the applicable rules as a percentage of the value of the claim, was in the amount of BGN 34,381 (EUR 17,586). The applicant applied for an exemption, stating that he did not have sufficient financial means, but three levels of court, up to the Supreme Court of Cassation, dismissed his application. They noted that he had not submitted a declaration on his economic situation, as required under Article 83 § 2 of the Code of Civil Procedure. In addition, he owned substantial assets; they had been frozen at the start of the forfeiture proceedings, but he could ask that the measures be partially lifted so that he could pay the fee – a possibility expressly provided for in section 23(4) of the 2005 Act.

3. The applicant complained under Article 6 § 1 of the Convention that he had been unjustly deprived of access to a court to have his appeal against the judgment of 1 August 2008 examined. He argued that the court fee exacted from him had been excessively high and impossible to pay, and that the national courts' approach to his exemption application had been unfair. The applicant complained in addition, relying on Articles 6 § 1 and 13 of the Convention and on Article 1 of Protocol No. 1, of the forfeiture of his assets, claiming in particular that it had not been sufficiently proven that the assets at issue had been the proceeds of crime.

THE COURT'S ASSESSMENT

4. As concerns the complaint that the applicant had been denied access to a court, the Government argued that he had not made proper use of the procedural avenues available. While he had applied for an exemption, he had not submitted a declaration on his economic situation, thus rendering impossible any meaningful examination of his application. In addition, he had not used the possibility under section 23(4) of the 2005 Act to ask that the garnishment on his assets be partially lifted; that was the procedural path envisaged for a situation such as his, and it had been resorted to by other defendants in forfeiture proceedings, as seen from decisions of the domestic courts submitted by the Government.

5. The applicant, for his part, contended that it had been pointless for him to submit a declaration on his economic situation, seeing that the very aim of the forfeiture proceedings had been to examine his assets. Moreover, it was

unreasonable to expect him to dispose of some of his assets to be able to pay the court fee.

6. The case concerns access to an appeal procedure, and the applicant stated that he had been unable to pay the respective court fee (see, on the limitations of the right of access to court, *Stanev v. Bulgaria* [GC], no. 36760/06, § 229, ECHR 2012, and *Naït-Liman v. Switzerland* [GC], no. 51357/07, § 115, 15 March 2018). The applicant had the possibility to apply for an exemption, but he did not duly pursue this procedural avenue. In particular, while he did submit an exemption application, he did not fill in the declaration required under domestic law concerning his economic situation, which led to the domestic courts dismissing the application. The applicant argued (see paragraph 5 above) that the declaration was unnecessary because the aim of the main proceedings had been to examine his economic situation. The Court does not find this argument entirely convincing. While it is true that the purpose of the main proceedings was to examine the applicant's economic situation, it has not been claimed that the documents in the case file contained information on that situation at the time when his exemption application was made. Given the passage of time between the start of the main proceedings and the request for exemption, requiring up-to-date information does not seem unreasonable. Nor does it appear reasonable to expect that the national courts were to study the whole file to take a merely procedural decision. And it has not been shown that the obligation to submit the necessary declaration was particularly cumbersome or difficult to comply with.

7. More importantly, the applicant could, alternatively, seek the partial unfreezing of his assets frozen at the start of the forfeiture proceedings. Such a possibility was expressly provided for under the 2005 Act (see paragraph 2 above), and the applicant has, once again, provided no reasonable justification for his failure to resort to it; nor has he argued that making use of the procedure at issue would have been particularly cumbersome or inefficient. At the same time, it does appear, as claimed by the Government (see paragraph 4 above), that the provision of section 23(4) of the 2005 Act was specifically meant to resolve difficulties such as the ones faced by him.

8. To sum up, the limitations on the applicant's right of access to the appeal court do not appear to affect the very essence of the right, nor to be disproportionate. The applicant did not comply with the formal requirements to seek an exemption from the obligation to pay a court fee, as well as failed to pursue the alternative option to use some of his frozen assets to meet this obligation.

9. In light of the above it is unnecessary to examine whether the court fee the applicant was required to pay was excessively high in the particular circumstances.

10. The Court thus concludes that the complaint under Article 6 § 1 of the Convention is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

11. As to the complaint about the forfeiture of the applicant's assets as proceeds of crime (see paragraph 3 above), it raises issues under Article 1 of Protocol No. 1 alone (see *Todorov and Others*, cited above, § 129).

12. The Government argued that the applicant had failed to exhaust the available domestic remedies, because he had not duly appealed against the judgment of 1 August 2008, ordering forfeiture (see paragraph 2 above).

13. The Court has held that, when making use of domestic remedies, applicants should comply with the formal requirements under domestic law (see, among other authorities, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014). In the case at hand, the Court already found that the applicant had failed to comply with the applicable procedural requirements under domestic law (see paragraph 8 above), and thus to make proper use of the remedy at his disposal, namely appeal before a higher court.

14. Accordingly, the complaint concerning the forfeiture of the applicant's assets as proceeds of crime must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 September 2023.

Olga Chernishova
Deputy Registrar

Ioannis Ktistakis
President