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

FOURTH SECTION

DECISION

Application no. 39983/19
Zevkshan Mustafa SHAIB
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 27 September 2022 as a Committee composed of:

Iulia Antoanella Motoc*, President,*

Yonko Grozev*,*

Pere Pastor Vilanova*, Judges,*

and Ludmila Milanova, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 39983/19) 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 20 July 2019 by a Bulgarian national, Ms Zevkshan Mustafa Shaib, who was born in 1957 and lives in Dobrich ("the applicant"), and who was represented by Ms A. Chobanova, a lawyer practising in Sofia;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Mrs V. Hristova, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case is of the type examined in *Kirilova and Others v. Bulgaria* (nos. 42908/98 and 3 others, 9 June 2005) concerning the delayed provision of compensation to the applicant for her parents' property, expropriated in 1983 for urban development by the municipal authorities of Dobrich. By the time the parties filed their latest submissions with the Court in July 2022, no compensation had yet been provided to the applicant. She complained under Article 1 of Protocol No. 1 and Article 13 of the Convention of the delays in the compensation procedure.

THE COURT'S ASSESSMENT

2. On 20 October 2021 the Court gave notice of the application to the Government. Draft declarations setting out a friendly-settlement proposal were sent to the parties by the Court's Registry and the applicant was informed, with reference to Rule 62 § 2 of the Rules of Court, that there was a requirement of strict confidentiality in respect of friendly-settlement negotiations.

3. As the attempts to reach a friendly settlement between the parties failed, the Court invited the Government to submit their written observations on the admissibility and merits of the case by 11 May 2022, which they did.

4. On 30 May 2022 the Government submitted additional observations on the admissibility of the application. It transpired from them that the applicant's representative had disclosed the content of the friendly-settlement declarations proposed by the Registry to the Supreme Administrative Court (hereinafter "the SAC") in the context of pending domestic tort proceedings against the Dobrich municipality. She had stated at a public hearing held on 17 March 2022 that a case was pending before the Court, that friendly-settlement proceedings had been underway and that the Government had not accepted the proposal. In addition, she had presented copies of the letter of 20 October 2021 from the Registry, informing the applicant that the case was being communicated to the Government (see paragraph 2 above), as well as the draft friendly-settlement declarations. The minutes of the hearing of 17 March 2022 are publicly available on the website of the SAC.

5. The Government thus raised an objection of abuse of the right of individual application, on the ground that the applicant's representative had breached the confidentiality of friendly-settlement negotiations in contravention of Article 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court.

6. In reply, the applicant's representative conceded that she had provided the documents mentioned above to the SAC but argued that no request for their confidentiality had been expressly made by any of the parties, referring in that respect to Rule 33 § 1 *in fine*. In addition, she claimed that the documents she had submitted to the SAC were intended to provide a comprehensive overview of the facts of the case. Therefore, she had not intended to influence the domestic authorities, or to exert pressure on them or the Government in the proceedings before the Court. In any event, she emphasised that the friendly-settlement declarations had not been published on the SAC website, hence they had not been disclosed to the public.

7. Pursuant to Rule 55 of the Rules of Court, any plea of inadmissibility, in so far as its character and the circumstances permit, must be raised by the respondent Contracting Party in its observations on the admissibility of the application. In the present case, the Government explained that they had failed to raise the objection in due time because they had become aware of

the relevant circumstances at a later stage, in the context of recent SAC rulings delivered in similar cases brought by other applicants represented by the same lawyer. The Court finds this explanation acceptable and is thus satisfied that in the present case there were exceptional circumstances that dispensed the Government from the obligation to raise their objection of inadmissibility within the time-limit set out for that purpose (see *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X; *Mooren v. Germany* [GC], no. 11364/03, § 57, 9 July 2009; and *Medvedyev and Others v. France* [GC], no. 3394/03, § 69, ECHR 2010). The Court will thus examine the objection at issue.

8. According to Article 39 § 2 of the Convention and Rule 62 § 2 of the Rules of Court friendly-settlement negotiations are confidential. This rule does not allow for an individual assessment of how much detail is disclosed (see *Lesnina Veletrgovina d.o.o. v. the former Yugoslav Republic of Macedonia* (dec.), no. 37619/04, 2 March 2010). It prohibits the parties from making information concerning the friendly-settlement negotiations public, either through the media, or by a letter likely to be read by a significant number of people, or by any other means (see *Abbasov and Others v. Azerbaijan (dec.),* no. 36609/08, § 30, 28 May 2013).

9. Furthermore, the general purpose of the principle of confidentiality is to protect the parties and the Court against possible pressure. Consequently, an intentional breach of the duty of confidentiality of friendly-settlement negotiations may be considered as an abuse of the right of application and result in the application being rejected (see *Hadrabová v. the Czech Republic* (dec.), no. 42165/02, 25 September 2007; *Miroļubovs and Others v. Latvia*, no. 798/05, § 66, 15 September 2009; and *Y and others v. Bulgaria*, no. 1666/19, § 25, 8 October 2020).

10. Turning to the present case, the Court finds that that the applicant's representative intentionally disclosed details of the friendly-settlement negotiations in a public court hearing (see paragraph 4 above). The minutes of the hearing are accessible on the Internet (ibid.). Furthermore, the disclosure of confidential information was made before the domestic court in the context of contentious proceedings which might have been influenced as a result (see *Y and others*, cited above, § 27).

11. The instructions enclosed with the Court's letter of 20 October 2021 made it clear that the nature of all friendly-settlement negotiations was strictly confidential (see paragraph 2 above). The letter also refereed to Rule 62 § 2 of the Rules of Court, where this is stated expressly (see paragraph 8 above). Therefore, the applicant's representative must have been aware of that requirement and should have complied with this at all stages of the proceedings. She did not do so and failed to provide any convincing justification for this.

12. Against this background, the Court concludes that the conduct of the applicant's representative amounts to a breach of the rule of confidentiality,

which must also be considered to constitute an abuse of the right of individual application.

13. It follows that the application is inadmissible 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 20 October 2022.

Ludmila Milanova Acting Deputy Registrar	Iulia Antoanella Motoc President