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

THIRD SECTION

DECISION

Application no. 11589/16
Ivan Borisov SOLAKOV
against Bulgaria

The European Court of Human Rights (Third Section), sitting on 9 April 2024 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. 11589/16) 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 February 2016 by a Bulgarian national, Mr Ivan Borisov Solakov ("the applicant"), who was born in 1967, lives in Petrich and was represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv;

the decision to give notice of the complaints concerning access to a court and the forfeiture of the applicant's assets as proceeds of crime to the Bulgarian Government ("the Government"), represented by their Agent, Ms I. Stancheva-Chinova from the Ministry of Justice, 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 proceedings which resulted in the forfeiture of assets of the applicant as proceeds of crime. In 2002 the applicant was convicted for organising unlawful gambling, and in 2008 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). In a judgment of 12 February 2013 the Burgas Regional Court ordered the forfeiture of numerous assets, including immoveable property, professional equipment and cars, valued by the Commission at about 5,400,000 Bulgarian levs (BGN), the equivalent of 2,760,000 euros (EUR); the domestic court considered that these assets could be presumed to be the proceeds of crime, seeing that the applicant had not shown that he had had sufficient lawful income to acquire them.

2. The applicant filed an appeal against the above judgment, and was instructed to pay a court fee to have it examined, calculated in accordance with domestic law as a percentage of what was considered to be the value of the claim against him, namely in the amount of BGN 74,879 (EUR 38,300). As the applicant's assets had been frozen at the start of the forfeiture proceedings, in a decision of 10 March 2014, upon his request, the Burgas Court of Appeal permitted him to withdraw money from a bank account to pay the fee. It turned out however that the account concerned did not contain sufficient funds, the bank having used up the money for the repayment of a loan.

3. In July 2014 the applicant applied to be exempted from the obligation to pay the court fee. As required under Article 83 § 2 of the Code of Civil Procedure, he submitted a declaration on his economic situation, where he stated that his monthly income was BGN 300 (EUR 153) from "rent and fees", and that he did not own any immoveable property or cars. His exemption application was dismissed on 17 December 2014 by the Burgas Court of Appeal, which noted that the applicant had not proven the statement about his income, and that the documents in the case file showed that he owned in fact substantial assets, including valuable moveable property such as cars and equipment which could be sold quickly, and with regard to which he could once again apply for the lifting of the initial interlocutory measures. The applicant owned in addition a company, which could have generated profit.

4. Throughout the developments above, the initial deadline for the payment of the court fee for appeal was periodically prolonged. After the decision of 17 December 2014 (which became final on 21 August 2015 when the Supreme Court of Cassation refused to accept it for cassation review), the applicant was once again given a time-limit to pay, after which the proceedings were discontinued. At this stage, when the relevant documents were served on the applicant's legal representative, the latter stated that he no longer represented the applicant, with whom he had not had contact since nearly two years. The attempts to serve the documents on the applicant himself failed, and the discontinuation of the proceedings became final in June 2016. The latest document submitted by the applicant with his application was the decision of 21 August 2015, and he was apparently

apprised of the subsequent developments after the communication of this case to the Government.

5. The applicant complained under Article 6 § 1 of the Convention of having been unfairly denied access to a court, seeing that his appeal against the Burgas Regional Court's judgment of 12 February 2013 had never been examined due to his failure to pay the requisite court fee. The applicant complained additionally, relying on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, that the forfeiture of his assets had been unjustified.

THE COURT'S ASSESSMENT

6. As concerns the complaint about access to a court, the Government pointed out that the applicant had not sought to have more of his assets unfrozen, after it had turned out that his bank account did not contain sufficient funds. The procedure at issue, under section 23(4) of the 2005 Act, had been specifically designed to respond to difficulties such as his. In addition, when the applicant had applied to be exempted from the obligation to pay the impugned court fee, he had acted in an inadequate manner, making untrue statements and failing to substantiate his claims that he had a very small income. The Government submitted case law of the domestic courts concerning the remedy under section 23(4) of the 2005 Act and exemption from court fees.

7. The applicant, for his part, contended that he had duly used the remedies available to him. He stated in addition that equipment and cars that he had owned, and could have hypothetically sold, had been stolen during a period of time he had spent in prison. Also, a large immoveable property with buildings and equipment, part of the frozen assets, had been ascribed to the bank in payment of the loan taken.

8. 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).

9. The Government referred to two remedies which the applicant could have used to alleviate his situation (see paragraph 6 above). The Court observes, indeed, that he could have sought to have other of his assets unfrozen, after it had turned out that his bank account did not contain sufficient funds, and that the procedure at issue, under section 23(4) of the 2005 Act, had been specifically designed to resolve difficulties such as the ones the applicant faced (see, for similar situation, *Rashid v. Bulgaria* (dec.) [Committee], no. 31239/11, § 7, 4 July 2023). The applicant had already used the remedy once, even though he had remained unable to pay the requisite court fee, and there is no indication that he could not resort to it again; these

were also the considerations put forward by the Burgas Court of Appeal, which noted in its decision of 17 December 2014 that the applicant still owned substantial assets (see paragraph 3 above). The applicant never raised at the domestic level the arguments made before the Court, namely that much of his moveable property had been stolen and that other property had been taken by the bank (see paragraph 7 above), nor explained why he could not use other frozen immoveable property.

10. The applicant could, in addition, seek exemption from the obligation to pay the impugned court fee. The case law submitted by the Government shows that the national courts are inclined to allow such exemption in proceedings under the 2005 Act, in situation where the parties show that they do not own liquid assets, or where the assets are of value exceeding significantly the fees due, or cannot be disposed of quickly, and where their sale would be cumbersome. The national courts have also held in some rarer cases that the obligation to pay in advance fees for appeal could obstruct the right to access to a court, and that such payment could therefore be deferred until the end of the proceedings.

11. Consequently, the procedure at issue could alleviate the applicant's situation, yet, as the Government pointed out, the applicant failed to make any practical use of it. While he did submit an exemption request and a declaration on his financial state, he omitted many facts, such as that he owned the assets subject to the forfeiture proceedings, or that he owned a company, and the statements actually made, namely that he only had an income of BGN 300 (see paragraph 3 above), remained unsubstantiated. As a result, the national courts were prevented from conducting any meaningful examination of his financial situation and from deciding whether it was justified to exempt him.

12. In conclusion, the limitations on the applicant's right of access to a court of appeal do not appear to have affected the very essence of the right, nor to have been disproportionate. The applicant did not comply with the formal requirements to seek an exemption from the obligation to pay a court fee, and failed to pursue in a meaningful manner the alternative option to use some of his frozen assets to meet this obligation (compare with similar conclusions in *Rashid*, cited above, § 8; and, on the diligence required on the part of applicants in similar situations, see, for example, *Laçi v. Albania*, no. 28142/17, § 55, 19 October 2021). It is also significant that the national courts, noting the applicant's difficult situation and his having spent time in prison, were prepared to accommodate and on many occasions prolonged the deadline to pay (see paragraph 4 above).

13. Lastly, the Court notes the Government's suggestion that at some point the applicant possibly lost interest in pursuing his appeal against the judgment of 12 February 2013. As mentioned, he failed to make meaningful use of the relevant remedies, ceased contact with his lawyer and, prior to

having his application to the Court communicated to the Government, was not aware of the developments in his case after 21 August 2015 (ibid.).

14. In light of the above it is unnecessary to examine the additional questions on which the parties made submissions, namely whether the court fee the applicant was required to pay was excessively high in the particular circumstances, and whether he had had means at his disposal to contest the value of the claim brought against him and thus influence the level of court fees.

15. The Court consequently 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.

16. 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).

17. The Government argued that the applicant had failed to exhaust the available domestic remedies, because he had not duly appealed against the judgment of 12 February 2013 ordering the forfeiture.

18. 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 paragraphs 9-12 above), and thus to make proper use of the remedy at his disposal, namely appeal before a higher court.

19. 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 16 May 2024.

Olga Chernishova Deputy Registrar	Ioannis Ktistakis President