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

FIRST SECTION

DECISION

Application no. 38823/14
Sali NUREDINI
against North Macedonia

The European Court of Human Rights (First Section), sitting on 7 July 2020 as a Committee composed of:

Pere Pastor Vilanova, *President*,
Jovan Ilievski,
Raffaele Sabato, *judges,*
and Renata Degener, *Deputy Section Registrar*,

Having regard to the above application lodged on 13 May 2014,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Sali Nuredini, is a Macedonian/citizen of the Republic of North Macedonia who was born in 1981 and is detained in Idrizovo prison. He was represented before the Court by Ms K. Jandrijeska -Jovanova, a lawyer practising in Skopje.

2. The Government of North Macedonia ("the Government") were represented by their Agent, Ms D. Djonova.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. Proceedings in Italy

4. On 14 May 2007 the Italian police found the dead body of the applicant's wife in an apartment rented in his name.

5. On 29 January 2009 the applicant, who was represented by an officially appointed lawyer, was convicted *in absentia* of aggravated murder by the Mantua Assize Court (it was stated in the judgment that he had fled the country and, according to data obtained from Interpol, he was in Gostivar, North Macedonia). He was sentenced to life imprisonment; the court also ordered publication of the judgment, banned the applicant from performing any public service, divested him of his parental rights, ordered him to pay the trial costs and damages to victims, and confiscated certain objects ("the Mantua judgment").

2. *Proceedings in the respondent State for enforcement of the Mantua judgment*

6. Following a request by the Italian authorities under Article 6 § 2 of the 1957 European Convention on Extradition (which provides that if the requested Party does not extradite one of its own nationals, it should at the request of the requesting Party submit the case to its competent authorities in order that appropriate proceedings may be taken), the Gostivar Court of First Instance ("the trial court") instituted proceedings for the recognition and enforcement of the Mantua judgment. The proceedings were conducted in accordance with section 554 of the Criminal Proceedings Act of North Macedonia, which regulated proceedings for enforcement, *inter alia*, of a foreign judgment. Under this provision, the competent domestic court was required to reproduce the operative provisions (*изрека*) of the foreign judgment, impose (*изрече*) a penalty comparable to the penalty indicated in the foreign judgment and state reasons.

7. On 5 November 2010 the trial court held a hearing in the presence of the public prosecutor and a lawyer whom it had appointed for the applicant. The introductory part of the judgment indicates that the proceedings were conducted in accordance with section 554 of the Criminal Proceedings Act and concerned the recognition and enforcement of the Mantua judgment. The trial court reproduced the operative provisions from that judgment and stated that the applicant had committed murder. Referring to the relevant provisions of the Criminal Code of the respondent State concerning murder, as well as section 554 of the Criminal Proceedings Act, it held that the crime committed by the applicant was punishable under the Criminal Code of the respondent State and sentenced him to life imprisonment. In so doing it held that the statutory conditions provided for in section 554 for the recognition and enforcement of a final judgment in respect of the penalty had been met. It also reproduced the confiscation and award orders, as set out in the Mantua judgment. Lastly, it ordered the applicant's detention on account of the risk of his absconding, finding that this risk would persist until he started serving his sentence.

8. On the same date the applicant was arrested. He appointed a lawyer of his own choosing to represent him in the proceedings. After the lawyer had

received the trial court's judgment, he appealed against both the detention order and the judgment itself. As to the latter, he alleged errors on points of law in "the proceedings for recognition and enforcement of a foreign court judgment". He complained, *inter alia*, of certain formal errors in the text of the judgment; that the trial court had not explained whether the statutory provisions on which the Mantua judgment had relied corresponded to the domestic statutory provisions quoted by the trial court; that it had not recognised the Mantua judgment in its entirety (for example, it had not recognised the publication order, the banning order or the order divesting the applicant of his parental rights). He asked that the Court of Appeal either "dismiss the request of a foreign body for recognition and enforcement of [the Mantua judgment] or remit the case to the trial court for re-examination".

9. On 9 November and 29 December 2010 the Gostivar Court of Appeal dismissed the appeals against the detention order and the trial court's judgment respectively. As to the latter, the court held that the trial court had complied with the requirements set forth in section 554 of the Criminal Proceedings Act. The orders in the Mantua judgment that had not been recognised by the trial court had not been provided for as security measures in the national legislation. The latter judgment was served on the applicant's lawyer and the applicant on 10 and 11 January 2011 respectively.

3. *Remedies used by the applicant against the Court of Appeal's judgment of 29 December 2010*

10. On 17 January 2011 the applicant lodged, through his lawyer, an appeal against the Court of Appeal's judgment of 29 December 2010 under section 407(1) of the Criminal Proceedings Act (this provision allows an appeal against a second-instance judgment pursuant to which the convicted person is sentenced to life imprisonment) in which he reiterated his earlier arguments (see paragraph 8 above). On 21 January 2011 the lawyer also lodged a request for extraordinary review (*барање за вонредно преиспитување на правосилна пресуда)*, a remedy that can be lodged against a final judgment in which a convicted person is sentenced to imprisonment.

11. By a decision of 1 March 2011, the Supreme Court rejected the request for extraordinary review of 21 January 2011 as inadmissible, holding, *inter alia*, that "a request for extraordinary review of a final judgment [was] not provided for under the Criminal Proceedings Act as an extraordinary remedy [to be used] in proceedings for recognition and enforcement of a foreign judgment".

12. By a decision of 19 November 2013, the Supreme Court rejected the applicant's appeal of 17 January 2011 as inadmissible, holding as follows:

> "[The appeal concerned] a final judgment on the recognition and enforcement of a judgment of a foreign court for which the Criminal Proceedings Act does not allow an appeal. In proceedings for recognition and enforcement of a foreign judgment ... the convicted person is not found guilty of a crime forming the subject of a final foreign judgment, but it is only declared that [that person] has been convicted as explained in that judgment, that is, the (domestic) judgment only reproduces the factual and legal description of the crime from the foreign judgment to be enforced ... and then it is to be established whether the offence is punishable under the criminal legislation [of the respondent State]. Therefore, an appeal against a final judgment on the recognition and enforcement of a foreign judgment cannot be lodged against the second-instance judgment since ... the convicted person has already appealed against the trial court's judgment ... The [applicant] cannot appeal against the final judgment because in the proceedings for recognition and enforcement of a foreign judgment the domestic court neither assesses nor establishes relevant facts or evidence in support of those facts that were established in the foreign judgment. It only states reasons for the penalty imposed."

The applicant's lawyer was served with this judgment on 18 December 2013.

13. On 3 June 2015 the public prosecutor refused an application by the applicant, submitted by his lawyer, for the public prosecutor to lodge with the Supreme Court a request for the protection of legality (*барање за заштита на законитост*) in relation to the Court of Appeal's decisions of 29 December 2010 and 4 January 2013 (see paragraph 17 below).

4. Proceedings for reopening

14. On 30 November 2010 the applicant, through his lawyer, requested the reopening of the recognition proceedings, arguing that the proceedings in Italy had been conducted in his absence and that he had only become aware of his conviction after the trial court had ordered his detention.

15. On 7 September 2011 the trial court dismissed the applicant's request, holding that its judgment of 5 November 2010 (see paragraph 7 above) had not been delivered *in absentia*. It added that an indictment by a competent public prosecutor of the respondent State had not been lodged and nor had the trial court held a public hearing to try the applicant *in absentia*. The judgment of 5 November 2010 had been delivered in the proceedings for the recognition and enforcement of the Mantua judgment in accordance with section 554 of the Criminal Proceedings Act.

16. The applicant's lawyer appealed, complaining that the courts had recognised a foreign judgment by which the applicant had been convicted without ever being heard in person, thus denying him the right to present his defence.

17. On 4 January 2013 the Court of Appeal dismissed the applicant's appeal. It held that in recognition proceedings the domestic courts did not review the foreign proceedings; they only determined a comparable sentence, for which they provided relevant reasoning. The sole purpose of those proceedings was to enforce a foreign judgment, in accordance with the

domestic legislation. It considered that the reopening of the proceedings, as an extraordinary legal remedy, was not applicable in proceedings concerning the enforcement of a foreign judgment.

18. The applicant's lawyer lodged an appeal, which the Supreme Court, by a decision of 19 November 2013, rejected as inadmissible, holding that "an appeal [could not be lodged] against a second-instance court decision".

COMPLAINTS

19. The applicant complained under Article 5 and Article 6 §§ 1 and 3 (c) of the Convention that he had been detained and sentenced to life imprisonment without ever being able to present his defence in court.

THE LAW

20. The applicant complained that his detention and trial in the respondent State had violated his rights under Article 5 and Article 6 §§ 1 and 3 (c) of the Convention. The relevant parts of those Articles read as follows:

Article 5

"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;..."

Article 6 §§1 and 3 (c)

"1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...

...

3. Everyone charged with a criminal offence has the following minimum rights:

...

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;..."

A. The parties' submissions

1. The Government

21. The Government raised several objections regarding the admissibility of the application. They argued that it had been lodged more than six months after the Court of Appeal's judgment of 29 January 2013, which was to be regarded as the last effective remedy for exhaustion

purposes. The subsequent remedies used by the applicant, who had been legally represented, were ineffective and could not bring the application within the six-month time-limit laid down in Article 35 § 1 of the Convention. They further submitted that Article 6 of the Convention did not apply to the recognition proceedings in issue because the domestic courts had neither decided on a new indictment (by the domestic public prosecutor), nor had they had any discretion as regards the penalty imposed in the Mantua judgment. They had only verified whether the formal requirements for the enforcement of that judgment, which had established the applicant's guilt and set the penalty, had been met. The Law on International Cooperation in Criminal Matters of September 2010, which proscribed the enforcement of a foreign judgment in which a person had been convicted *in absentia*, had come into force on 1 December 2013 and had accordingly not been applicable in the applicant's case. Lastly, they argued that the applicant had not informed the Court about, *inter alia*, the outcome of his appeal against the Court of Appeal's judgment of 29 January 2013 (or his application for the protection of legality), notwithstanding that his lawyer had received a copy of the relevant decision before the lodging of the application with the Court (see paragraph 12 above). Any lack of communication between the applicant and his lawyer in the domestic proceedings as regards the service of domestic court judgments could not justify his failure to bring relevant information to the Court's attention. Since that failure had been intentional, they invited the Court to strike the application out of its list of cases for abuse of the right of petition.

2. The applicant

22. The applicant submitted that the enforcement of the Mantua judgment had been contrary to section 86 of the Law on International Cooperation in Criminal Matters, He further argued that section 407 of the Criminal Proceedings Act (see paragraph 10 above) did not explicitly prohibit the use of an appeal against a second-instance judgment delivered in proceedings for the enforcement of a foreign judgment. In this connection he alleged that in its judgment (see paragraph 7 above) the trial court had not indicated that it concerned the enforcement of a foreign judgment, but had instead convicted him and sentenced him to life imprisonment. Lastly, the applicant denied that he and his lawyer in the proceedings before the Court had been informed that his legal representative in the domestic proceedings had been served with the decisions of the Supreme Court and the public prosecutor (see paragraphs 12-13 above).

B. The Court's assessment

23. The Court will examine the Government's objection that the application does not comply with the six-month rule in Article 35 § 1 of the

Convention. The examination of that issue is closely linked to the effectiveness of the remedies used by the applicant seen in the context of the legal nature of the proceedings in question.

24. In this connection the Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of the exhaustion of domestic remedies. However, this provision allows only remedies which are normal and effective to be taken into account, as an applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Convention (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 130-32, 19 December 2017). The pursuit of remedies which do not satisfy the requirements of Article 35 § 1 will not be considered by the Court for the purposes of establishing the date of the "final decision" or calculating the starting-point for the running of the six-month rule. It follows that if an applicant has recourse to a remedy which is doomed to failure from the outset, the decision on that appeal cannot be taken into account for the calculation of the six-month period (see *L.R. v. North Macedonia*, no. 38067/15, § 64, 23 January 2020, and the references cited therein).

25. The Court observes that the proceedings in question were initiated following a request by the Italian Government under Article 6 § 2 of the 1957 European Convention on Extradition in relation to the Mantua judgment, by which the applicant was convicted of aggravated murder and sentenced to life imprisonment (see paragraphs 5-6 above). They were conducted in accordance with section 554 of the Criminal Proceedings Act, which governs the enforcement of a foreign judgment. The trial court's judgment of 5 November 2010 clearly indicated that it concerned the recognition and enforcement of the Mantua judgment (see paragraphs 6-7 above). Having regard to the arguments put forward in the appeal against the trial court's judgment, which were limited to various aspects of the enforcement of the Mantua judgment (see paragraph 8 above), it cannot be said that the legal nature of the proceedings in question was unknown to the applicant, who was represented (after the trial court's judgment had been delivered) by a lawyer of his own choosing. That judgment and the detention order were confirmed by two separate judgments of the Court of Appeal dated 9 November (regarding the detention order) and 29 December 2010 (regarding the enforcement of the Mantua judgment).

26. The subsequent remedies used by the applicant did not concern the detention order and the Court of Appeal's judgment of 9 November 2010, but were directed solely against its judgment of 29 December 2010 regarding the Mantua judgment. Accordingly, the judgment of 9 November 2010 was the last "final" decision to be taken into account for the applicant's complaint under Article 5 of the Convention. It was not

argued, nor was any evidence submitted, that that judgment had been served on the applicant less than six months before the date on which of the application was lodged with the Court (13 May 2014).

27. The Court of Appeal's judgment of 29 December 2010 was served on the applicant's lawyer and the applicant on 10 and 11 January 2011 respectively (see paragraph 9 above). The Government asserted that that judgment was to be regarded as the "final" domestic decision for the calculation of the six-month time-limit under Article 35 § 1 of the Convention.

28. The Court notes that the applicant availed himself of several remedies against that judgment, namely an appeal under section 407 of the Criminal Proceedings Act (which provides for an appeal against a second-instance judgment in which a convicted person is sentenced to life imprisonment; see paragraph 10 above), a request for extraordinary review of a final judgment (allowed in cases where a prison sentence is imposed), a request for the reopening of the proceedings and a request for the protection of legality. It will examine whether these remedies were effective and accordingly whether they should be taken into account for the calculation of the six-month rule with respect to the applicant's complaints under Article 6 of the Convention.

29. The Court observes that both the appeal under section 407 of the Criminal Proceedings Act and the request for extraordinary review were rejected by the Supreme Court as inadmissible. That court held that in accordance with the applicable rules on criminal procedure, neither remedy was allowed against the Court of Appeal's judgment of 29 December 2010 (see paragraphs 11-12 above), which concerned proceedings for "recognition and enforcement of a foreign judgment". In its decision rejecting the applicant's appeal, the Supreme Court further held that "[i]n proceedings for recognition and enforcement of a foreign judgment ...the convicted person is not found guilty of a crime ... the (domestic) judgment only reproduces the factual and legal description of the crime from the foreign judgment to be enforced ... and then it is to be established whether the offence is punishable under the criminal legislation [of the respondent State]". Accordingly, the basis on which that decision and, indeed, the rejection of the request for extraordinary review rested was the finding that the proceedings for the enforcement of the Mantua judgment did not involve the determination of a new criminal charge against the applicant. The Court does not consider such a finding unreasonable. The proceedings in question involved an examination of whether or not the applicant's acts committed in Italy were punishable under the law of the respondent State, an assessment that was abstract in nature and did not relate to the determination of his guilt (see *Saccoccia v. Austria* (dec.), no. 69917/01, 5 July 2007).

30. Having regard to its limited jurisdiction as to the interpretation of domestic law, which is primarily a matter for the national courts, the Court

does not consider that the manner in which the Supreme Court interpreted the relevant provisions of the Criminal Proceedings Act as to the admissibility of these remedies in the present case was arbitrary or unreasonable. The applicant neither argued, nor provided any example to show, that the domestic practice pertaining to the Supreme Court's jurisdiction regarding these remedies in proceedings for the enforcement of a foreign judgment, such as in the present case, was inconsistent or otherwise unforeseeable. The applicant was represented by a lawyer of his own choosing, who was in a position to ascertain whether in the circumstances of the case the appeal and a request to the Supreme Court for extraordinary review, which would have been decided at third instance, would have been admissible.

31. Similar considerations apply to the request for the reopening of the proceedings for the enforcement of the Mantua judgment submitted by the applicant's lawyer, which was also rejected as inadmissible. Both the trial court and the Court of Appeal held that the reopening of such proceedings was not allowed under the domestic rules on criminal proceedings (final decision of 4 January 2013; see paragraph 17 above). In addition, the applicant lodged a further appeal against the final decision of the Court of Appeal in the reopening proceedings, which the Supreme Court rejected as inadmissible on a different ground, namely that an appeal could not be lodged against a second-instance court decision (see paragraph 18 above).

32. Lastly, the Court observes that the applicant applied to the public prosecutor to request that the latter lodge a request for the protection of legality with the Supreme Court. Since such a request is fully dependent on the discretion of and can be lodged only by the competent public prosecutor, this remedy is not an effective remedy for the purposes of Article 35 § 1 of the Convention that the applicant was required to use (see *Gavrilov v. the former Yugoslav Republic of Macedonia* (dec.), no. 7837/10, § 27, 1 July 2014, and the references cited therein).

33. In view of the foregoing, the Court considers that the remedies used by the applicant against the Court of Appeal's judgment of 29 December 2010 (see paragraph 28 above) were not effective within the meaning of Article 35 of the Convention, as they were inadmissible and, accordingly, without any prospect of success (see *Rezgui v. France* (dec.), no. 49859/99, ECHR 2000-XI). In such circumstances, the decisions delivered pursuant to these remedies cannot bring the applicant's complaints under Article 6 of the Convention within the six-month time-limit laid down in Article 35 § 1 of the Convention, which, in the circumstances of the present case, started running on 10 January 2011, when the Court of Appeal's judgment of 29 December 2010 was served on the applicant's lawyer (see paragraph 9 above).

Accordingly, the application has been lodged out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 September 2020.

Renata Degener
Deputy Registrar

Pere Pastor Vilanova
President