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

FIFTH SECTION

DECISION

Application no. 22715/15
Goran BOZHINOSKI
against North Macedonia

The European Court of Human Rights (Fifth Section), sitting on 10 December 2020 as a Committee composed of:

Stéphanie Mourou-Vikström, *President,*
Jovan Ilievski,
Arnfinn Bårdsen, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to the above application lodged on 4 May 2015,

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 Goran Bozhinoski, is a Macedonian/citizen of the Republic of North Macedonia who was born in 1988 and lives in Ohrid. He was represented before the Court by Mr V. Stojkoski, a lawyer practising in Struga.

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

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

4. On 10 March 2010, at around 6.30 p.m., an armed robbery was committed at an exchange office in a residential neighborhood of Skopje.

5. Following an investigation, on 7 March 2011 a judge at the Ohrid Court of First Instance issued a search warrant for the applicant's home.

6. The search was carried out in the presence of the applicant on 8 March 2011 by the police authorities in Ohrid. Afterwards the applicant was escorted to Ohrid police station, from where police officers took him to Skopje police station for questioning in connection with the above-

mentioned offence. At Skopje police station, the applicant was photographed and participated in an identification parade.

7. Later that day, the applicant was questioned by an investigating judge at the Skopje Court of First Instance, who issued a decision to open a criminal investigation in respect of the applicant in connection with the alleged offence.

8. On 10 and 11 March 2011, three articles were published online, followed by five articles in daily newspapers, in which it was stated that the person who had robbed the exchange office had been caught. The articles pointed out that the applicant (designated by his initials) had been charged with armed robbery, and they indicated his home town and his age. The articles were similar in content. They went on to explain the details of the armed robbery and the amount of money stolen. A photograph of the applicant with a black strip over his eyes was published in four of the articles. The articles were written in purely journalistic terms and did not mention or cite any statement made by the police authorities.

9. Following a decision by the public prosecutor not to prosecute, in view of the insufficient evidence that the applicant had committed the criminal offence, on 5 May 2011 an investigating judge at the Skopje Court of First Instance terminated the investigation.

10. On 22 October 2012 the applicant instituted proceedings against the Ministry of the Interior ("the Ministry") at the Ohrid Court of First Instance ("the trial court"), claiming compensation for non-pecuniary damage under the provisions of the Obligations Act, for a violation of the principle of the presumption of innocence. He argued that the media had published information that had been leaked by the Ministry while the criminal investigation was still ongoing. The applicant submitted in evidence an expert report which confirmed that the information published in the media had had a negative impact on the applicant's mental health and everyday life.

11. On 21 January 2013 the trial court upheld the applicant's claim. Relying on his testimony, it found that the police had unlawfully released his personal details to the media in the early stages of the investigation. It ordered compensation for non-pecuniary damage to be paid by the Ministry in the amount of 180,000 Macedonian denars (equivalent to about 3,000 euros).

12. On an appeal by the Ministry, on 11 June 2013 the Bitola Court of Appeal overturned the trial court's judgment and dismissed the applicant's claim, holding that, *inter alia*, it had not been established that the information in the media had been leaked by the police authorities, and that the applicant could potentially have sought compensation from the media outlets that had published the damaging information. On 17 September 2014 the Supreme Court upheld that judgment.

COMPLAINTS

13. The applicant complained under Article 6 § 2 of the Convention that the police had provided the media with his personal details and a photograph of him, which had subsequently been published online and in newspaper articles. He argued that this had violated his right to the presumption of innocence. The applicant also complained, in substance, that the above damaged his honour and reputation under Article 8 of the Convention. Article 6 § 2 and Article 8 of the Convention read as follows:

Article 6 § 2

"Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

THE LAW

A. The parties' submissions

14. The Government objected that the applicant had not exhausted domestic remedies because, as stated by the domestic courts in the proceedings in issue, he had not sued the media for having published the articles in question. Such an action could have been lodged simultaneously with the claim against the Ministry, or after the completion of the proceedings, since the statute of limitations had not yet expired. The Government further denied that the Ministry had provided the media with the applicant's personal details and photograph. The photograph in the possession of the Ministry had not been the same as the one published in the media. In support of that argument, they submitted a document issued by the Ministry on 29 November 2017 attesting to that fact.

15. The applicant submitted that the remedies referred to by the Government were ineffective for the purposes of his allegation that the Ministry alone had been responsible for allowing information exclusively in its possession to be leaked to the media.

B. The Court's assessment

16. The general principles regarding the rule of exhaustion of domestic remedies under Article 35 § 1 of the Convention are set out in *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 70-77, 25 March 2014, with further references, in particular to *Akdivar and Others v. Turkey*, 16 September 1996, *Reports of Judgments and Decisions* 1996−IV).

17. In that connection, the Court finds it appropriate to reiterate that in order to be effective, a remedy must be capable of remedying directly the state of affairs at issue and must offer reasonable prospects of success. There is no obligation to have recourse to remedies which are inadequate or ineffective (see *Akdivar and Others*, § 67, and *Vučković and Others*, §§ 73-74, both cited above).

18. The Court notes that in support of their non-exhaustion plea, the Government referred to the possibility that the applicant could have lodged a claim for damages against the media outlets in question. Having regard to the manner in which the applicant formulated his claim before the domestic courts and before the Court (see paragraph 13 above), the Court considers that the remedy referred to by the Government is inadequate in the circumstances of the case. This is because such an action could not have addressed the applicant's complaints that the Ministry should be held responsible for the publication of his personal details in the media, in violation of the principle of the presumption of innocence or for damaging his honour and reputation. For these reasons, the Court dismisses the Government's objection of non-exhaustion of domestic remedies.

19. The Court nevertheless considers that the application is inadmissible for the following reasons. It is uncontested that while the investigation against the applicant was ongoing, several media outlets published articles about the crime, and in that context provided the applicant's personal details, such as his initials, his home address and a photograph of him with a black strip over his eyes. Both the Bitola Court of Appeal and the Supreme Court, which are best placed to assess the available evidence, dismissed as unsubstantiated the applicant's allegations that the Ministry had been responsible for the publication of his personal details by the media. They found no evidence that the information about him published in the media articles had been obtained from the Ministry. Having regard to its limited jurisdiction as regards the assessment of evidence (see *Stoimenov v. the former Yugoslav Republic of Macedonia*, no. 17995/02, § 46, 5 April 2007, and *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015) and the available material in its possession, the Court finds no grounds to depart from the findings of the domestic courts.

20. Accordingly, the application 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 21 January 2021.

Martina Keller
Deputy Registrar

Stéphanie Mourou-Vikström
President