



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

FOURTH SECTION

CASE OF GEORGI MARINOV v. BULGARIA

(Application no. 36103/04)

JUDGMENT

STRASBOURG

15 March 2011

FINAL

15/06/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Georgi Marinov v. Bulgaria,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Sverre Erik Jebens,

Päivi Hirvelä,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. de Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 February 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36103/04) 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”) by a Bulgarian national, Mr Georgi Dimitrov Marinov (“the applicant”), on 30 September 2004.

2. The applicant was represented by Mr D. Marinov, a lawyer practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Mrs S. Atanasova of the Ministry of Justice.

3. The applicant alleged that because of the unlawful actions of the administration he could not fully exercise his right to peaceful enjoyment of possessions.

4. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1924 and lives in Brestovitza.

A. The expropriation and restitution of the applicant's land

6. In 1977 a plot of land measuring 1,870 square metres belonging to the applicant was expropriated for public needs in order to build an administrative and cultural centre and a road. The applicant received compensation of 3,314.52 old Bulgarian levs.

7. On 28 April 1992, after the entry into force of the 1992 Law (see paragraph 23 below), the applicant made a request to the mayor of the Rodopi Municipality in Plovdiv (“the mayor”) for the revocation of the expropriation because neither of the public works for the purposes of which it had been expropriated had commenced.

8. On 10 September 1992 the applicant paid back the compensation he had received in 1977 at the time of the expropriation.

9. In a decision of 14 September 1992 the mayor revoked the expropriation. Because of administrative omissions in that decision, on 30 August 1993 the mayor issued a new one to the same effect.

10. It appears that for a certain period of time the applicant was able to use and to benefit from the whole property or at least from part of it (see paragraphs 14 and 20 below).

11. On 7 November 1995, 11 April 1996 and 27 June 1996 the applicant requested the mayor to modify the land register in order to include the returned land. A procedure to that effect commenced in November 1995.

12. As by 11 April 1996 the mayor had not yet ordered the modification of the land register, the applicant lodged an appeal against his tacit refusal to do so.

13. On 4 October 1996 the mayor approved the modification and on 29 October the applicant's son in his capacity as owner of a neighbouring plot was officially informed about it.

14. According to the applicant on 23 June 1998 an administrative sanction was imposed on him for having used the land after the expropriation. He appealed against the sanction to the domestic courts. It appears that the appeal was granted and the sanction was quashed on an unspecified date not later than March 2002.

15. On an unspecified date the applicant found out that in the land register as modified in 1996 the area of the returned land had been reduced to 910 square metres and a note had been added indicating that the remaining 960 square metres were part of a road the construction of which had already started.

16. On an unspecified date in 1999 the applicant asked the court to declare the order of 4 October 1996 null and void as it did not comply with the restitution orders.

17. In a judgment of 2 March 2001 the Plovdiv Regional Court declared the mayor's order of 4 October 1996 null and void as not being in compliance with the orders of 14 September 1992 and 30 August 1993 and

thus being in violation of paragraph 1(2) of the additional provisions of the 1992 Law (see paragraph 23 below). This judgment was not appealed against and entered into force on 18 April 2001.

18. Subsequently, on 19 November 2001, the mayor approved the modification of the land register to include the whole area of the land.

B. The proceedings for damages against the State

19. In 2001 the applicant initiated an action for damages under the State and Municipalities Responsibility for Damage Act (“the SMRDA”) against the Plovdiv Rodopi Municipality. Relying on the Constitution and on Article 1 of Protocol No. 1 he alleged that due to the problems with the inclusion of the whole surface of the property in the land register, he had been unable “to enter into possession, use and dispose of the returned land in the period between September 1992 and 2001”. He claimed potentially lost earnings and presented calculations from an expert based on the growing of certain types of agricultural products on the whole surface of the land for the period in question. The applicant also sought non-pecuniary damage for the anguish and suffering sustained.

20. At the hearing of 15 January 2002 the applicant's son testified that the applicant had used the whole area for a couple of years, but thereafter the municipal authorities had forbidden him to use part of it claiming that it had been allocated for the construction of a new road. He also testified that the applicant had been involved in court proceedings over that question and that because of these problems with the land the applicant had suffered anguish and frustration.

21. In a judgment of 5 April 2002 the Plovdiv District Court dismissed the claim as manifestly ill-founded, as did the Plovdiv Regional Court in a final judgment of 19 August 2004.

22. On the one hand the courts admitted that there had been certain omissions on the part of the municipal authorities and that there had been obstacles preventing the applicant from using his land. On the other hand they held that registration in the land register was not decisive for ownership of the land, nor could it affect the right to use it. Furthermore, the applicant had not presented the order of 23 June 1998 by which an administrative sanction had been imposed on him. Therefore, he had failed to prove the reasons and the extent of the alleged interference and that there had been a causal connection between the refusal to register the whole surface of the land in the land register and the damage allegedly sustained. He had also failed to prove that as a result of the actions or omissions of the municipal authorities he had sustained financial loss. The witness testimony had not clearly established what kind of anguish and suffering the applicant had experienced and there had been no medical evidence that he had suffered

from a physical illness as a result of the alleged interference with his right of property. The courts did not specifically address the applicant's arguments that he could not obtain an up-to-date plan view of the property and hence to dispose of the whole of this property.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Restitution of expropriated property

23. In 1992 the Law on the Restitution of Property Expropriated under Building Planning Legislation (*Закон за възстановяване на собствеността върху някои отчуждени имоти по ЗТСУ, ЗПИИМ, ЗБНМ, ЗДИ и ЗС*, “the 1992 Law”) was adopted. It provided for the restitution of expropriated property where specific conditions were met. The request for restitution had to be lodged with the mayor of the municipality, whose refusal could be appealed to the regional court. The mayor's decision was binding on all State authorities (paragraph 1(2) of the additional provisions). Owners who had received compensation for the expropriation had to return the compensation in order for the restitution order to enter into force (section 6).

B. Land register

24. The land register is a land survey information system which consists of registers and cadastral maps.

25. At the relevant time the adoption and modification of the land register were governed by the Common Cadastre of the Peoples Republic of Bulgaria Act of 1979 (“the CCPRBA”) and the Regulations on its implementation (“the Regulations”).

26. The CCPRBA and the Regulations provided that the land register should contain information, *inter alia*, about the boundaries, the area and the type of plots of land, the constructions on these plots and the ownership rights over them. Most of this information had to be mentioned in the deeds and contracts concerning immovable property, such as notary deeds, sales contracts, *superficie* contracts, etc. All of these deeds and contracts had to be accompanied by a plan view issued by the regional land register service (section 34 of the Regulations). The state authorities and the domestic courts were under the obligation to inform the land register officials, *inter alia*, of all changes in the ownership and the boundaries of private properties which had come to their knowledge. These changes had to be duly entered in the land registers and maps (sections 13 and 14 of the CCPRBA).

27. As of 1 January 2001 the CCPRBA was replaced by the Cadastre and Property Register Act (“the CPRA”). It clarified and expanded the provisions in respect of the land register. Section 49 b, in force as of 2004, provided that for the issuance of notary deeds and other acts concerning the rights over immovable property a plan view, i.e. a copy taken from the cadastral maps was necessary. The same was provided in section 2(3) of Ordinance No. 3 of 28 April 2005 (Наредба № 3 от 28.04.2005 г. за съдържанието, създаването и поддържането на кадастралната карта и кадастралните регистри), which governed the keeping of the cadastral maps and registers.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

28. The applicant complained under Article 1 of Protocol No. 1 that his right to peaceful enjoyment of his possessions was infringed as between 1992 and 2001 he could neither use the land returned to him, nor dispose of it.

29. Article 1 of Protocol No. 1 reads:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

30. The Court finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

31. The applicant contended that for the period between 1992 and 2001 he had been unable to enter into possession of his land and to use it or dispose of it. Moreover, on 23 June 1998 an administrative sanction had been imposed on him for having worked the land. He further argued that cadastre registration was a precondition for receiving a plan view. He argued that without such a plan it would have been impossible to obtain a notary deed or to dispose of the land.

32. The Government submitted that the applicant had failed to substantiate his allegations and that his rights under Article 1 of Protocol No. 1 had not been violated. They further argued that the applicant could fully use the 910 square metres of land which had been returned to him and registered in the cadastre as early as 1996.

33. Relying on the Court's findings in the case of *Velikovi and Others v. Bulgaria*, (nos. 43278/98 et al., 15 March 2007), the Government further contended that in the specific context of the transition from a totalitarian to a democratic society the restitution process had been accompanied by a number of difficulties and problems, which should be accepted as inevitable and proportionate. In the light of these difficulties, the applicant's restitution proceedings had been handled lawfully and expediently.

2. The Court's assessment

(a) Whether there was a possession

34. The Court finds that the applicant had a "possession" within the meaning of Article 1 of Protocol No. 1 as after the revocation of the expropriation and the return of the compensation received by the applicant for it, the applicant's ownership over the 1,870 square metres of land was restored (see paragraphs 8, 9 and 23 above). The applicant thus could legitimately expect that henceforth he would be able to enjoy the complete recognition of his title and the full realisation of his property rights, along with the finalisation of any and all ensuing formalities, including the registration of the full surface of the property in the land register (see above paragraph 26 in fine).

(b) Interference and justification

35. The parties disagree as to whether there has been an interference with the applicant's rights under Article 1 of Protocol No. 1.

36. The Court refers to its case-law in which it found that a failure to enforce a final decision recognising title to property or an unjustified delay

in the enforcement of such a decision constitutes an interference with the peaceful enjoyment of possessions and may amount to a violation of Article 1 of Protocol No. 1 (see *Ramadhi and Others v. Albania*, no. 38222/02, §§ 76 -84, 13 November 2007, *Nuri v. Albania*, no. 12306/04, § 40, 3 February 2009, *Naydenov v. Bulgaria*, no. 17353/03, §§ 72 and 85, 26 November 2009, *Mutishev and Others v. Bulgaria*, no. 18967/03, §§ 138 and 146, 3 December 2009 and *Lyubomir Popov v. Bulgaria*, no. 69855/01, § 131, 7 January 2010).

37. It considers that the present case is no different from the above mentioned cases. In particular it notes that there was a delay of about nine years between the restitution of the land in 1992, pursuant to the decision of 14 September 1992 and the finalisation of the land register amendments in 2001. On the basis of the material before it, the Court finds it established that this delay was caused by protraction in registering the applicant's property in the land register and in particular the mayor's refusal of 1996 to register the full surface of the land at issue (see paragraphs 9, 11-17 and 22 above). This was established by the domestic courts, which declared the 1996 refusal unlawful (see paragraph 17 above) and, in the proceedings under the SMRDA, found that there had been obstacles hindering the applicant's use of the land (see paragraph 22 above). Thus, during a period of about nine years the applicant was left in a state of uncertainty as to the realisation of his property rights.

38. In the light of these considerations, the Court considers that the delay in the registration of the land and the impugned attitude of the local authorities between 1992 and 2001 constituted an interference with the applicant's right to peaceful enjoyment of his possessions.

39. Furthermore, the Court finds that there was no justification for this interference with the applicant's rights of property and that it was not in accordance with the law. This is so because the mayor's order of October 1996, authorising the registration of only part of the property, was contrary to the orders for the revocation of the expropriation, by virtue of which the ownership of the whole surface of the property had been restored to the applicant. This order was declared null and void by the domestic courts.

40. There has been therefore a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13

41. The applicant also complained under Article 13 of the Convention that he did not have at his disposal effective remedies for the alleged violation of Article 1 of Protocol No. 1 to fully enjoy his right of property.

42. Article 13 provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

43. The Government submitted that in the proceedings under the SMRDA the domestic courts had examined the applicant's allegations that he had been prevented from effectively enjoying his rights of property and had given well-reasoned judgments.

A. Admissibility

44. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

45. The Court observes that the applicant employed relevant remedies and obtained court decisions as a result of which the mayor's order of October 1996 was declared null and void and thereafter the whole surface of the land was included in the land register (see paragraphs 17 and 18 above). Apparently, the administrative sanction of 1998 was also quashed. However, the applicant was refused compensation under the SMRDA.

46. The Court notes that an action under the SMRDA is, in principle, a remedy capable of providing redress for delays in the restitution or restoration of expropriated property (see *Lyubomir Popov v. Bulgaria*, cited above, §§ 97, 99 and 104 and *Naydenov v. Bulgaria*, cited above, §§ 45 and 46). In particular, pecuniary as well as non-pecuniary damage can be awarded by the domestic courts in that respect (see *Mutishev v. Bulgaria*, cited above, §§ 49-56).

47. In the present case, however, the domestic courts dismissed the applicant's action and refused to award him non-pecuniary damage on the ground that he had failed to adduce sufficient evidence for the suffering he had sustained as a result of the delay in entering his property in the land register (see paragraph 22 above). They failed to have due regard to the consequences of the unlawful order of 1996 and the fact that for about nine years the applicant had been in a state of uncertainty as to the full realisation of his right of property. Their holding was apparently based on the underlying proposition that non-pecuniary damage such as stress, frustration and anxiety could only be proved through formal, external evidence, such as medical certificates, and that witness testimony in that respect had to describe the suffering sustained in a particularly precise and concrete manner.

48. This approach has already been criticised by the Court in a different context (see, *mutatis mutandis*, *Iovchev v. Bulgaria*, no. 41211/98, § 146, 2 February 2006, concerning non-pecuniary damage stemming from poor conditions of detention, and *Danev v. Bulgaria*, no. 9411/05, §§ 32-37,

2 September 2010, concerning compensation for a short-term unlawful detention).

49. The Court considers that as a result of the above described formalistic approach on the issue whether damage had been sustained, in the present case the domestic courts failed to provide the applicant with procedural guarantees as to the full enjoyment of his possessions. Thus, the action for damages under the SMRDA, which could in principle serve as an effective remedy, lost much of its remedial efficacy.

50. The Government have not shown that Bulgarian law provides for other means of redress for the violation of Article 1 of Protocol No. 1.

Accordingly, there has been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

51. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

1. *Pecuniary damage*

52. The applicant claimed 8,000 euros (EUR) in respect of potential earnings allegedly lost as a result of the impossibility to use his land. He relied on the conclusions of the expert who reported in the course of the proceedings under the SMRDA (see paragraph 19 above).

53. The Government considered that the claim was groundless.

54. Having examined the material in its possession, the Court is not convinced that the applicant had suffered pecuniary damage as a result of the above established violations. In particular, from the materials in the Court's possession it is not entirely clear whether and for what period of time the applicant has been unable to possess the property and to benefit from it and whether this alleged impossibility concerned the whole surface of the property or only part of it (see paragraphs 20 and 22 above). In addition, it does not appear that the expert who presented an opinion in the SMRDA proceedings dealt with the issue of causal link.

55. Therefore, the Court dismisses the applicant's claim under this head.

2. *Non-pecuniary damage*

56. The applicant claimed EUR 2,500 in respect of non-pecuniary damage.

57. The Government argued that the applicant had failed to prove that he had suffered non-pecuniary damage and therefore no award under this head should be made.

58. The Court finds that the applicant must have suffered anguish and frustration as a result of the violations found. Deciding on equitable basis, it awards him EUR 1,200 under this head.

B. Costs and expenses

59. The applicant claimed EUR 2,000, for 40 hours of work by his lawyer for the proceedings before the Court, at an hourly rate of EUR 50. He further claimed EUR 1,000 for expenses incurred in the domestic proceedings under the SMRDA. He presented an authorisation form and a time sheet.

60. The Government argued that the applicant had not presented sufficient evidence that he had actually incurred the claimed expenses as he had not presented a contract with his representative. Therefore they urged the Court to dismiss the applicant's claims under this head. In any event, they contended that the claims were excessive.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

62. In the present case, regard being had to the information and documents in its possession, the Court finds it reasonable to award EUR 1,500 for the said costs and expenses.

C. Default interest

63. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

- 1. Declares* the application admissible;
- 2. Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
- 3. Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1;

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian leva at the rate applicable at the date of settlement:

(i) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 March 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President