



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

FOURTH SECTION

CASE OF IDAKIEV v. BULGARIA
(Application no. 33681/05)

JUDGMENT

STRASBOURG

21 June 2011

FINAL

21/09/2011

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

In the case of Idakiev v. Bulgaria,

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

Nicolas Bratza, *President*,

Sverre Erik Jebens,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić,

Vincent A. De Gaetano, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 31 May 2011,

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

PROCEDURE

1. The case originated in an application (no. 33681/05) 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 Ivan Yordanov Idakiev (“the applicant”), on 30 August 2005.

2. The applicant was represented by Mr A. Kashamov and Ms D. Mihaylova, lawyers practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agents, Ms M. Dimova and Ms M. Kotseva, of the Ministry of Justice.

3. The applicant complained, in particular, that the Supreme Administrative Court had failed to examine a decisive argument of his. He also complained that he had been deprived of his property and that the restitution proceedings to which he, and before him his father, had been a party had been too lengthy and had been marred by frequent legislative changes and uncertainty.

4. On 15 September 2009 the President of the Fifth Section decided to give notice of the application to the Government.

5. Following the re-composition of the Court’s sections on 1 February 2011, the application was transferred to the Fourth Section of the Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and lives in Pernik.

7. Agricultural lands owned by the applicant's father and grandfather were collectivised after 1945.

8. Following the entry into force of the Agricultural Land Act (see paragraph 26 below), on 22 February 1992 the applicant's father sought to recover fifteen plots formerly owned by him in the area of the village of Kasilag totalling 39,650 square metres. In two decisions adopted on 16 May 1996 the Radomir Agricultural Land Commission ("the land commission") restored to him several plots totalling 21,755 square metres, some in their old boundaries and the remainder through a land redistribution plan which was to be adopted later.

9. On 28 February 1992, acting on behalf of the applicant's grandfather's heirs, the applicant's father sought to recover another thirty-seven plots formerly owned by the applicant's grandfather, also in the area of Kasilag, totalling 175,000 square metres. The applicant's father was entitled to one-seventh of the applicant's grandfather's property. In two decisions also dated 16 May 1996 the land commission restored to the heirs a number of plots totalling 107,500 square metres, some in their old boundaries and the remainder through the land redistribution plan.

10. The land redistribution plan for the area of Kasilag was published on 18 June 1996. Under that plan the applicant's father and the heirs of the applicant's grandfather received most of the plots detailed in the above-mentioned decisions of 16 May 1996.

11. On 26 November 1997 the applicant's father, acting on his own behalf and on behalf of the applicant's grandfather's heirs, challenged the plan, arguing that they could have been given additional plots, including some of the plots in respect of which the land commission had refused restitution, and that the land that had been allocated to them was not of good quality. In two decisions of 19 January 1998 the land commission refused to amend the plan. On 29 July 1998 the applicant's father sought judicial review.

12. Despite the pending judicial review proceedings, on 27 March 2000 the land commission adopted two decisions whereby it decided that the applicant's father was to receive municipally-owned land or bonds as compensation in lieu of restitution for 11,888 square metres of land. In addition, the heirs of the applicant's grandfather were to receive compensation for 16,425 square metres of land.

13. On 5 July 2002 the Pernik Regional Court gave a judgment in the judicial review proceedings. It found that the decisions of 19 January 1998

were null and void because they had not been issued in accordance with the relevant procedure, and it remitted the case to the land commission for re-examination.

14. Upon an appeal by the applicant, on 13 December 2002 the Supreme Administrative Court quashed that judgment in so far as the case had been remitted to the land commission, and instructed the Regional Court to examine the merits of the applicant's father's objections to the land redistribution plan.

15. In a new judgment of 5 July 2004 the Pernik Regional Court found that the land redistribution plan for Kasilag could be amended so that the applicant's father's objections could be satisfied. Accordingly, the court amended the plan and allotted to the applicant's father a plot of 14,888 square metres, and to the heirs of the applicant's grandfather another plot of 37,779 square metres.

16. On 12 July 2004 that judgment was served on the Radomir Agriculture and Forestry Department (formerly the Radomir Agricultural Land Commission) and the Radomir municipality. It was served on the applicant's father on 21 July 2004. The parties were informed that they could appeal against it within fourteen days of the dates of the respective notifications. No appeals were filed within the relevant time-limits.

17. As the Pernik Regional Court had failed to award costs, on 29 July 2004 the applicant's father requested that the judgment of 5 July 2004 be supplemented to take account of this, as provided for in Article 192 of the 1952 Code of Civil Procedure (see paragraph 34 below).

18. The applicant's father passed away on 7 August 2004. His heirs – the applicant and the latter's mother and sister – continued the proceedings in his stead. Later, it transpired that the applicant's father had left a will bequeathing all his property to the applicant.

19. On 12 August 2004 the Pernik Regional Court examined and allowed the applicant's father's request concerning costs and awarded to his heirs 322 Bulgarian leva (BGN).

20. On 19 August 2004 that decision was served on the Radomir Agriculture and Forestry Department.

21. On 20 August 2004 the Radomir Agriculture and Forestry Department filed with the Supreme Administrative Court an appeal in which it challenged both the Regional Court's decision concerning costs and the decision on the merits given on 5 July 2004.

22. The applicant and his mother and sister also appealed against the decision of 12 August 2004, claiming a higher award for costs.

23. The Supreme Administrative Court held a hearing on 14 February 2005. According to the record of the hearing, the applicant's representative said:

“It was not indicated in the [Agriculture and Forestry Department's] appeal that any other decision of the Regional Court, apart from the one concerning costs, was being

challenged. The judgment has become final. I maintain my clients' appeal in respect of the award for costs and therefore ask [the Supreme Administrative Court] to allow it and award us the remainder."

24. In a judgment of 2 March 2005 the Supreme Administrative Court allowed the Agriculture and Forestry Department's appeal, without commenting on its admissibility or the objection raised by the applicant's representative, and quashed the Pernik Regional Court's judgment of 5 July 2004. Deciding on the merits of the case, it found that there were no grounds to amend the land redistribution plan and allocate new plots to the applicant's father and the heirs of the applicant's grandfather.

25. It is unclear what the developments in the restitution procedure were after the above-mentioned judgment, and in particular whether the applicant and the remaining heirs of his grandfather received any compensation, as per the land commission's decisions of 27 March 2000 (see paragraph 12 above) or any subsequent decisions.

II. RELEVANT DOMESTIC LAW

A. Restitution of agricultural land

26. The Agricultural Land Act (*Закон за собствеността и ползването на земеделските земи*), adopted in 1991, provides, *inter alia*, that persons, or their heirs, whose land has been collectivised may request restoration of their ownership rights under certain conditions. On the basis of certain statutory criteria, such as whether or not the old borders of the plot of land once owned by the claimant or his or her ancestors can be determined, restitution may be "in actual boundaries" ("*реални граници*") or through a land redistribution plan ("*план за земеразделяне*").

27. The administrative bodies competent to decide on the restitution of agricultural land were, in the beginning, the respective land commissions, which were replaced in 2002 by Agriculture and Forestry Departments, after 2008 renamed Agricultural Departments. Their members are appointed by the Minister of Agriculture.

28. Where restitution is impossible the former owners of agricultural land are to be compensated with municipal land or with compensation bonds, which can be used in privatisation tenders or for the purchase of State-owned land.

29. After its adoption in 1991 the Agricultural Land Act underwent numerous amendments, mostly of a technical nature, which did not significantly alter the substantive rights accorded to former owners of agricultural land.

30. The remaining provisions of that Act concerning the restitution of agricultural land have been summarised in the Court's judgments in

Lyubomir Popov v. Bulgaria (no. 69855/01, §§ 83-87 and 92, 7 January 2010) and *Mutishev and Others v. Bulgaria* (no. 18967/03, §§ 61, 68-74, 82 and 89-90, 3 December 2009).

B. Relevant procedural provisions

31. At the relevant time most of the procedural rules applicable to judicial review proceedings were contained in the Administrative Procedure Act of 1979 and the Supreme Administrative Court Act of 1997. The Code of Civil Procedure of 1952 was also applicable, on a subsidiary basis.

32. Section 33 of the Supreme Administrative Court Act provided that an appeal against the judgment of a lower court was to be lodged within fourteen days of the notification of that judgment. By section 37 of the Act, the Supreme Administrative Court was to discontinue proceedings where that time-limit had not been complied with. In addition, Article 40 of the Code of Civil Procedure stipulated that the courts were to disregard any procedural steps taken by the parties after the expiry of the applicable time-limits.

33. Article 219 of the Code provided that judgments which had not been appealed against within the relevant time-limits became final. By Article 220 any final judgment was binding on the parties, the court which had given it, and all other courts and public bodies.

34. Article 192 of the Code provided that after being pronounced, a judgment could not be revoked or amended by the court which had given it except where it contained an obvious error or the court had failed to make an award in respect of costs. In the latter case, the new decision concerning costs was independently subject to appeal before a higher court.

35. Article 189 § 2 of the Code of Civil Procedure obliged the courts to give reasoned decisions.

36. In respect of the grounds justifying the reopening of judicial proceedings, section 41 of the Supreme Administrative Court Act referred to Article 231 § 1 of the Code of Civil Procedure, which, in subparagraph (d), stated that reopening was permissible where

“there has been another conflicting decision concerning the same parties, the same claim and the same cause of action”.

The Supreme Court of Cassation has held that this provision does not concern conflicting findings reached following an appeal by a higher court in the framework of the same proceedings and concerning the same dispute (see, for example, Judgment of the Supreme Court of Cassation no. 428 of 4 November 1998, case no. 29/1998).

37. After 12 July 2006 the grounds for reopening judicial proceedings were provided for in the new Code of Administrative Procedure, which in

Article 239 § 6 provides that an interested party may request the reopening of the proceedings in the event that

“a judgment of the European Court of Human Rights has found a violation of the [Convention]”.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

38. Relying on Articles 6 § 1 and 13 of the Convention, the applicant complained that the Supreme Administrative Court had quashed the Pernik Regional Court’s judgment of 5 July 2004 following an appeal by the Radomir Agriculture and Forestry Department which had been time-barred; it had failed to respond to the applicant’s argument that the appeal was time-barred and the said judgment had already become final.

39. The Court finds that the complaint falls to be examined under Article 6 § 1 of the Convention. The parties do not question its applicability to the dispute at issue, which obviously concerned the “civil rights” of the applicant. Article 6 § 1, in so far as relevant, reads:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Arguments of the parties

40. The Government argued that the complaint was inadmissible for non-exhaustion of domestic remedies because the applicant had failed to seek the reopening of the proceedings, as provided for under Article 231 § 1 (d) of the 1952 Code of Civil Procedure (see paragraph 36 above).

41. In addition, the Government considered that the applicant’s allegations about a violation of Article 6 § 1 of the Convention were “absolutely ill-founded and unjustified” because the Radomir Agriculture and Forestry Department had appealed in due time against the Pernik Regional Court’s judgment of 5 July 2004 “as amended by the additional decision of 12 August 2004”. Furthermore, the Government were of the view that the applicant’s representative had not raised before the Supreme Administrative Court, in a sufficiently clear and explicit manner, an objection against the timing of that appeal, and that the Supreme Administrative Court had been under no obligation to verify the appeal’s admissibility of its own motion.

42. The applicant disputed these arguments. As to the Government's objection concerning non-exhaustion of domestic remedies, he pointed out that the reopening procedure was an extraordinary remedy and not part of the regular judicial procedure. Furthermore, the provision of Article 231 § 1 (d) of the 1952 Code of Civil Procedure was not applicable to his case because it did not concern cases where the "conflicting decisions" were those of the first- and second-instance courts.

43. As to the merits, the applicant disputed the Government's assertion that the Radomir Agriculture and Forestry Department had appealed against the judgment of 5 July 2004 "in due time". He also disputed the Government's interpretation of his representative's statement at the court hearing held on 14 February 2005. He considered that his representative had unequivocally raised an objection as to the admissibility of the other party's appeal. In any event, relying on Article 40 of the Code of Civil Procedure (see paragraph 32 above), the applicant considered that even in the absence of any objection on his part the Supreme Administrative Court had been under an obligation to make sure that the statutory time-limits had been complied with.

44. In conclusion, the applicant considered it to be established that the Supreme Administrative Court had been under an obligation to reply to his argument, which had been decisive for the outcome of the proceedings. It had failed to do so.

B. The Court's assessment

1. Admissibility

45. The Court takes note of the Government's objection concerning non-exhaustion of domestic remedies, based on the applicant's failure to make use of the possibility to seek the reopening of the proceedings under Article 231 § 1 (d) of the Code of Civil Procedure, in force at the time (see paragraph 40 above). The Court does not consider it necessary to determine whether such reopening could in principle be regarded as an effective remedy, because it agrees with the applicant that this remedy was not applicable to the case. It notes that according to the Bulgarian Supreme Court of Cassation a higher court's decision to quash the decision of a lower court, upon an appeal by one of the parties and in the framework of the same proceedings, cannot be seen as a ground for reopening (see paragraph 36 above). Accordingly, the Court dismisses the Government's objection.

46. The Court further observes that the Government's second objection – that the complaint was "ill-founded and unjustified" – is a matter which goes to the merits of the case and will be addressed as a question of substance.

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

2. Merits

48. The Court reiterates that Article 6 § 1 of the Convention obliges domestic courts to give reasons for their decisions (see, among many other authorities, *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A, and *Yanakiev v. Bulgaria*, no. 40476/98, §§ 71-72, 10 August 2006). The extent to which this duty applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons, deriving from Article 6 § 1, can only be determined in the light of the circumstances of the case (see *Gorou v. Greece (no. 2)* [GC], no. 12686/03, § 37, ECHR 2009-...).

49. In the present case the applicant argued before the Supreme Administrative Court that the Radomir Agriculture and Forestry Department's appeal against the judgment of the Pernik Regional Court of 5 July 2004, which had allowed his father's claims to have the land redistribution plan for Kasilag modified, had been time-barred. The Court agrees with the applicant that this argument was clearly raised by his representative, who pointed out at the hearing before the Supreme Administrative Court that the Regional Court's judgment had become final; his statement to that effect was also noted in the record of the hearing (see paragraph 23 above).

50. It is not the Court's task to decide whether the applicant's objection was well-founded, as it falls to the national courts to determine questions of that nature (see *Ruiz Torija*, § 30, and *Yanakiev*, § 72, both cited above). Nevertheless, the Court notes that the objection appears to be at least arguable, because the main judgment of 5 July 2004 was served on the Radomir Agriculture and Forestry Department on 12 July 2004 (see paragraph 16 above); therefore, the fourteen-day time-limit for it to appeal (see paragraph 32 above) expired on 26 July 2004. However, its appeal was lodged on 20 August 2004, that is, after the expiry of the period allowed for it to appeal against the main judgment but within the time-limit for appealing against the additional decision of 12 August 2004 concerning costs (see paragraph 21 above).

51. Furthermore, the Court finds that the applicant's objection was clearly relevant because had the Supreme Administrative Court found it to be well-founded it would have dismissed as inadmissible the Agriculture

and Forestry Department's appeal in so far as it concerned the main judgment.

52. Therefore, the Court finds that the Supreme Administrative Court was obliged to give a reasoned answer to the objection at issue. This obligation, contained implicitly in Article 6 § 1 of the Convention (see paragraph 48 above), was also provided for in Article 189 § 2 of the Code of Civil Procedure, in force at the time (see paragraph 35 above). Moreover, the provisions of domestic law, namely section 33 of the Supreme Administrative Court Act and Article 40 of the Code of Civil Procedure, obliged the Supreme Administrative Court to verify of its own motion that the Agriculture and Forestry Department's appeal had been lodged in due time, as they required appeal proceedings to be discontinued in case of failure to abide by the time-limits (see paragraph 32 above).

53. Nevertheless, despite being under an obligation to examine the applicant's objection, the Supreme Administrative Court failed to do so and made no mention of it in its judgment of 2 March 2005 (see paragraph 24 above).

54. There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL NO. 1

55. The applicant complained under Article 1 of Protocol No. 1 that he had been deprived of the land allotted to his father and the heirs of his grandfather by virtue of the judgment of 5 July 2004. In addition, he complained that the restitution of his ancestors' property had been delayed for many years and ultimately refused, chiefly as a result of the uncertainty engendered by frequent legislative changes.

56. Article 1 of Protocol No. 1 provides:

"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

57. The Court considers that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or

inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

58. The Government contended that the Supreme Administrative Court had been right in finding that there had been no grounds to amend the land redistribution plan for Kasilag, as sought by the applicant's father. Therefore, the Pernik Regional Court's judgment of 5 July 2004 had not given rise to any property rights for the applicant.

59. The Government further defended the Bulgarian State's efforts to achieve a fair balance between the interests of different groups of citizens in the process of transition to a democratic society, which had resulted in numerous amendments to the restitution legislation and had complicated the restitution process. Moreover, they pointed out that the applicant alleged that his interests had been prejudiced because the Supreme Administrative Court had decided arbitrarily in his case, and not because of amendments to the restitution legislation.

60. The applicant asserted that the judgment of 5 July 2004 had given rise to property rights for his father and the heirs of his grandfather, and thus for himself, and that this amounted to a "possession" within the meaning of Article 1 of Protocol No. 1. He had been deprived of this possession by virtue of the Supreme Administrative Court's final judgment, which had been erroneous and given in breach of the law.

61. In respect of the second limb of his complaint, the applicant relied on the Court's judgment in the case of *Viașu v. Romania* (no. 75951/01, 9 December 2008). He considered that, as in that case, the frequent and unjustified changes to the restitution legislation had given rise to uncertainty, brought about the protraction of the restitution proceedings, led to contradictory decisions in his case, and thus ultimately resulted in his being deprived of his property.

62. The Court notes that it has already found that the applicant did not receive a fair trial and that there was thus a violation of Article 6 § 1 of the Convention (see paragraphs 48-54 above). The Court cannot speculate what the outcome of the proceedings would have been had it been otherwise, that is, had the Supreme Administrative Court examined the applicant's objection that the Radomir Agriculture and Forestry Department's appeal against the judgment of 5 July 2004 had been time-barred. The Court refers in this connection to paragraph 70 below. Consequently, the Court does not consider it necessary to rule on whether the judgment of 5 July 2004 gave rise to a "possession" for the applicant, within the meaning of Article 1 of Protocol No. 1, and whether the applicant was unlawfully deprived of that "possession" (see, *mutatis mutandis*, *Yanakiev*, cited above, § 82, with further references).

63. Nor does the Court consider that, in the circumstances of the present case, it has to deal with the question of uncertainty in the restitution process as a result of frequent legislative changes. The central issue in the case, which impacted on the applicant's prospects of obtaining the restitution of the property at hand, was, as already noted, the Supreme Administrative Court's failure to address his argument about the timeliness of the appeal filed by the Radomir Agricultural and Forestry Department, which the Court found in breach of Article 6 § 1 of the Convention (see paragraphs 48-54 above). In those circumstances, it does not seem necessary here to dwell on the alleged defects of the restitution process as a whole.

64. In those circumstances, the Court does not consider that the complaints under Article 1 of Protocol No. 1 call for separate examination.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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. Pecuniary damage

66. For pecuniary damage, the applicant claimed 62,621.06 Bulgarian leva (BGN), the equivalent of 31,980 euros (EUR), which included compensation for the market value of the two plots of 14,888 and 37,779 square metres, as described in the Pernik Regional Court's judgment of 5 July 2004 (see paragraph 15 above), and for the fact that it was impossible to use that land during the period after 1992.

67. The Government disputed the existence of any causal link between the damages claimed and the alleged violations of the Convention.

68. The Court notes that in the present case an award for pecuniary damage can only be based on the fact that the applicant did not have the benefit of the guarantees of Article 6 § 1 of the Convention. Whilst the Court cannot speculate as to the outcome of the proceedings had the situation been otherwise (see paragraph 62 above), it considers that the applicant suffered a loss of real opportunities (see *Yanakiev*, cited above, § 88). Accordingly, it awards him EUR 2,000 under this head.

69. The Court also considers it necessary to point out that a judgment in which it finds a violation of the Convention imposes on the respondent State a legal obligation not just to pay those concerned the sums awarded by way of just satisfaction, but also to choose, subject to supervision by the Committee of Ministers, the general and/or, if appropriate, individual

measures to be adopted in its domestic legal order to put an end to the violation found by the Court and make all feasible reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see, among other authorities, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 487, ECHR 2004-VII). In the case of a violation of Article 6 of the Convention, the applicant should as far as possible be put in the position he would have been in had the requirements of this provision not been disregarded (see, among other authorities, *Lungoci v. Romania*, no. 62710/00, § 55, 26 January 2006).

70. The Court notes in this connection that Article 239 § 6 of the Code of Administrative Procedure allows for the reopening of the domestic proceedings if the Court has found a violation of the Convention or its Protocols (see paragraph 37 above). Thus, the Court is of the view that the most appropriate form of redress in the case would be to reopen the proceedings in due course and re-examine the case in keeping with all the requirements of a fair trial (see *Yanakiev*, cited above, § 90).

B. Non-pecuniary damage

71. The applicant claimed EUR 5,000 for non-pecuniary damage, arguing that he had experienced uncertainty and frustration for many years.

72. The Government considered the claim to be excessive.

73. The Court finds that the applicant must have suffered anguish and frustration as a result of the violation of his right to a fair trial found in this case. Judging on an equitable basis, it awards him EUR 2,000 under this head.

C. Costs and expenses

74. Lastly, the applicant claimed EUR 2,940 for forty-two hours of work performed by his lawyers, Mr Kashamov and Ms Mihaylova, in connection with his representation before the Court, at a rate of EUR 70 per hour. In support of this claim he presented a contract for legal representation and a time-sheet. He also claimed BGN 322, the equivalent of EUR 164, for the costs incurred before the domestic courts, as indicated in the Pernik Regional Court's decision of 12 August 2004 (see paragraph 19 above). He requested that any amount awarded for costs and expenses be transferred directly into his lawyers' bank account.

75. The Government disputed these claims, arguing that they were excessive and not supported by sufficient documents. Furthermore, they considered that there was no legal ground to award the applicant any costs for the domestic proceedings.

76. 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.

77. The Court is of the view that the amount claimed for the work performed by the applicant's lawyers is excessive. Furthermore, it notes that it has only found a violation of Article 6 § 1 of the Convention. Therefore, the Court awards the applicant EUR 2,000 under this head, to be transferred directly into the bank account of his representatives, Mr Kashamov and Ms Mihaylova.

78. As to the costs for the domestic proceedings before the Pernik Regional Court, it has not been established that they were actually incurred and, moreover, the applicant has not shown that they were necessary, that is, that they related to an attempt on his part to remedy the violations of the Convention. Therefore, this claim must be dismissed.

D. Default interest

79. 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 6 § 1 of the Convention;
3. *Holds* that the complaints under Article 1 of Protocol No. 1 do not call for separate examination;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of 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 on the date of settlement:
 - (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be transferred directly into the bank account of the applicant's legal representatives;

(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 claims for just satisfaction.

Done in English, and notified in writing on 21 June 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President