



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

FOURTH SECTION

CASE OF STOYCHEVA v. BULGARIA

(Application no. 43590/04)

JUDGMENT

STRASBOURG

19 July 2011

FINAL

19/10/2011

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

In the case of Stoycheva 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 28 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 43590/04) 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, Ms Veska Dimitrova Stoycheva (“the applicant”), on 23 November 2004.

2. The applicant, who had been granted legal aid, was represented by Mrs S. Stefanova and Mr M. Ekimdzhiiev, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Mrs R. Nikolova of the Ministry of Justice.

3. The applicant alleged that the authorities’ failure to enforce the final court judgment of 1997 restoring her property rights over a plot of land deprived her of her right to the peaceful enjoyment of her possessions. She relied on Article 1 of Protocol No. 1 and Article 13 of the Convention.

4. On 11 December 2008 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The application was subsequently assigned to the Fourth Section following the recomposition of the Court’s Sections on 1 February 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1937 and lives in Plovdiv.

6. The applicant's father owned one quarter of a plot of land with a total surface area of 2,184 square metres, situated in Plovdiv. In the period between 1954 and 1956 the plot was expropriated for public use. In 1956 the applicant's father received, as compensation for the expropriation, a plot of land in the same area, which he sold in 1957 to a third person.

7. On 8 April 1992, after the entry into force of the Law on the Restitution of Property Expropriated under Building Planning Legislation ("the 1992 Law" – see paragraph 26 below), the applicant submitted a request to the mayor of Plovdiv ("the mayor") for the revocation of the expropriation and the restitution of the expropriated property to her as an heir of the person from whom it had been expropriated.

8. The mayor dismissed her request, finding that the property could not be restored to the applicant as a bridge had been built over it.

9. The applicant appealed to the Plovdiv Regional Court. In the course of the proceedings, in 1995, a court-appointed expert concluded that the public works for the purposes of which the property had been expropriated had affected only part of it, leaving 1,500 square metres that could be restored to the original owners. The expert opinion was accompanied by several plans.

10. In a judgment of 23 October 1997, the Regional Court set aside the expropriation order in respect of one quarter of 1,500 square metres of the property, within the specific boundaries marked on a plan provided by the above expert ("the 1995 plan"). This plan was an inseparable part of the court's judgment. Neither party submitted a petition for review (cassation).

11. The court did not examine the issue of the compensation that the applicant's father had received for the expropriation, nor was this issue raised by the municipality during the course of the proceedings or at any time after. It appears that the applicant did not return this compensation. It also appears that after the judgment of 23 October 1997 came into effect, the municipality never challenged, on that basis or on any other grounds, the applicant's ownership of the one quarter of the plot of 1,500 square metres that had to be returned to her.

12. Subsequently, in January 1998, 1999 and 2000 the applicant filed several requests with the Plovdiv municipality inviting the latter to execute the judgment of 1997 and, in particular, to register the returned property in the land register.

13. The municipality discovered that the 1995 plan did not correspond to the current urban plan and that it contained a number of technical errors.

These defects made it technically impossible to register the returned property in the land register. Therefore, on 9 November 1999 the municipality requested that the Plovdiv Regional Court rectify these defects, which it apparently refused to do.

14. In September and November 2000 the municipality informed the applicant that a procedure for the modification of the land register under section 32(1)(2) of the Zone Plan Act had been started, but because of a number of technical errors in the 1995 plan, which the Regional Court had refused to rectify, it was impossible to issue an up-to-date plan. The applicant was advised to request the expert who prepared the 1995 plan to provide the information missing therein.

15. In a letter dated 26 July 2002 the municipality again informed the applicant that the property could not be registered in the land register because of the defects in the 1995 plan and advised her that registration might become possible if the boundaries of the property were determined and marked on the spot (да се заснежат на място материализирани граници). In this connection, it was open to her to request the assistance of an enforcement judge.

16. Meanwhile, the applicant had requested the issuing of a writ for the execution of the judgment of 1997. Her request was rejected by both the Plovdiv Regional Court and the Supreme Administrative Court in a final decision of 24 September 2002. The courts held that judgments in respect of restitution of properties were not subject to enforcement as their purpose was the transformation of a right (имат конститутивен ефект) and did not include an order to act. The 1992 Law did not provide for the enforcement of final decisions or judgments by an enforcement judge.

17. On 2 December 2002 the applicant requested the Plovdiv Regional Court to interpret its judgment of 1997 and to indicate a method for its execution. A hearing was scheduled for 14 April 2003. The outcome of these proceedings is not clear.

18. On 13 March 2003, upon the request of a co-owner of the plot at issue, the municipality instituted a procedure for the modification of the land register in order to register a new plot which appeared to be almost identical to the one which had been returned in part to the applicant in 1997.

19. On several occasions in February and May 2004 the applicant requested that the municipality mark the boundaries of her property on the spot (трасиране на имота) or issue a certificate (служебна бележка) to that effect. In reply, the municipality informed her that this was within the competence of the local land registry office and reminded her that the procedure for the entry of the property in the land register had not yet been completed.

20. Meanwhile, on 21 April 2004 the applicant filed an application in which she objected to the amendments to the land register and reiterated her request for the marking of the boundaries. On 20 May 2004 the municipality

dismissed the applicant's objection as she had not identified any procedural violations.

21. On 4 June 2004 the mayor gave his approval for the above-mentioned amendment to the land register.

22. On 15 June 2004 the applicant appealed stating that she "did not agree with the proposed amendment" and reiterating her request for the marking of the property's boundaries. The appeal was dismissed by the municipal authorities as no specific procedural breaches had been challenged.

23. On 19 August 2004 a deed establishing omissions or errors in the cadastral maps (акт за непълноти и грешки в кадастралния план) was issued, providing for the registration, pursuant to the mayor's decision of 4 June 2004, of a new property in the land registry. In the deed, the applicant was listed as one of the co-owners of the property, along with three other individuals and the municipality. It is not clear whether this modification was carried out in accordance with the judgment of 1997 and the boundaries determined by the 1995 plan.

24. Relying on the deed of 19 August 2004, on 1 October 2004 the mayor approved the amendment to the land register. The applicant was informed that she could object within fourteen days. It is not clear whether she did so.

25. The parties have not informed the Court of any subsequent developments after 2004, despite its explicit request to that effect.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Restitution of expropriated property

26. 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 enacted. It provided for the restitution of expropriated property where no construction project had been effected and where certain other specific conditions had been met. The request for restitution had to be lodged with the mayor of the municipality, whose refusal could be appealed against to the Regional Court. The mayor's decision was binding on all State authorities (paragraph 1(2) of the additional provisions).

27. Owners who had received compensation at the time of expropriation were required to return the compensation in order for the restitution order to enter into force (section 6). In their practice, the domestic courts have held, however, that when deciding on the request for revocation of the expropriation, the administrative organs or courts are not obliged to rule on

the question of whether the compensation received for the expropriation has been returned because the duty to do so flows directly from the law (Реш. № 239 от 17.03.1994 г. на ВАС по адм. д. № 3585/1999 г.; Реш. № 5425 от 19.10.1999 г. на ВАС по адм. д. № 3165/1999 г.). Therefore, the return of compensation was not a precondition for the revocation but, rather, a consequence of the revocation taking effect (Реш. № 9299 от 5.12.2001 г. на ВАС по адм. д. № 4699/2001 г., to the contrary see Реш. № 3377 от 21.06.1999 г. на ВАС по адм. д. № 2047/1999 г.).

28. On the other hand, section 7(2) of the 1992 Law provided that if another property had been received as compensation for an expropriation and had subsequently been transferred to a third person, revocation of the expropriation could not be granted, unless the property received in compensation had been returned to the person requesting the expropriation, who could then return it to the State. In their practice, the domestic courts have held that where another property has been received as compensation for an expropriation and has then been sold to a third party and therefore cannot be returned to the State, revocation of an expropriation cannot be granted. An objection to this effect has often been raised by municipalities or prosecutors taking part in proceedings as third parties acting in the interest of the State (Реш. № 5231 от 12.10.1999 г. на ВАС по адм. д. № 2890/1999 г.; Реш. № 3041 от 09.06.1999 г. на ВАС по адм. д. № 1210/1999 г.). In one case, the Supreme Court of Cassation held that the issue of compensation under section 7(2) of the 1992 Law had to be examined *proprio motu* by the administrative authorities competent to revoke the expropriation and by the courts which dealt with appeals against refusals of revocation (Реш. № 674 от 08.02.2001 г. на ВАС по адм. д. № 6979/2000 г.).

29. Bulgarian restitution legislation, including the 1992 Law, does not provide for any specific procedure for the execution of decisions or judgments returning expropriated property to its former owners.

30. Section 64(1) of the Municipal Property Act of 1996 provides that municipal properties which have been returned to their former owners and which no longer belong to the municipality should be struck out of the municipal property register (актови книги) and possession thereof passed to their former owner.

B. Land register

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

32. At the relevant time the adoption and modification of the land register were governed by the Common Cadastre of the People's Republic

of Bulgaria Act of 1979 (“the CCPRBA”) and the Regulations on its implementation (“the Regulations”).

33. The CCPRBA and the Regulations provided that the land register should contain information, *inter alia*, about the boundaries, surface area and type of plots of land, any construction(s) on these plots and ownership rights over them. Most of this information had to be provided in the deeds and contracts concerning immovable property, such as notary deeds, sales contracts, etc. All of these deeds and contracts had to be accompanied by a plan issued by the regional land register service (section 34 of the Regulations). The state authorities and domestic courts were under an 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).

34. On 1 January 2001 the CCPRBA was replaced by the Cadastre and Property Register Act (“the CPRA”), which clarified and expanded the provisions in respect of the land register. Section 49b, in force since 2004, provides that for the issuance of notary deeds and other acts concerning the rights over immovable property a plan, namely, a copy taken from the cadastral maps is necessary. The same is 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 governs the keeping of the cadastral maps and registers.

C. The Building Planning Act of 1973

35. Under section 32 of the Building Planning Act (“the BPA”) (*Закон за териториално селищното устройство*), in force between 1973 and 2001, amendments to the different zone plans could be made, *inter alia*, in cases of errors and omissions in these plans (section 32(4)) and in cases of errors and omissions in the cadastral maps (section 32(2)). In the latter case, both the zone plan and the cadastral maps were to be amended. After the entry into force of the CCPRBA in 2001, this procedure was governed by section 53 of that Act. Section 32 was superseded by section 134(2) of the new Building Planning Act of 2001, which retained the possibility of amendments to the zone plan in cases of errors and omissions. Where the latter were contained in the cadastral maps, they had to be amended first under the procedure set out in section 53 of the CCPRBA.

D. The State Responsibility for Damage Act (“the SRDA”) of 1988 and relevant practice of the domestic courts

36. The relevant provisions and domestic courts’ practice in connection with actions for damages under the State Responsibility for Damage Act (the Act’s title having been amended later to State and Municipalities’ Responsibility for Damage Act (SMRDA)) have been summarised in the Court’s judgments in the cases of *Lyubomir Popov v. Bulgaria*, no. 69855/01, §§ 96-99, 7 January 2010; *Naydenov v. Bulgaria*, no. 17353/03, §§ 43-47, 26 November 2009; and *Mutishev and Others v. Bulgaria*, no. 18967/03, §§ 93-96, 3 December 2009.

THE LAW

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

37. The applicant complained under Article 1 of Protocol No. 1 to the Convention that although her property had been restored to her by virtue of the final court judgment of 1997, she had been unable to enjoy this property because of the domestic authorities’ failure to execute the 1997 judgment.

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

38. The Government argued that the applicant had failed to exhaust all available domestic remedies because she had not filed an action under section 1 of the SMRDA and had not initiated certain procedures under section 32 of the BPA of 1973.

39. The applicant contested this argument, maintaining that an action under the SMRDA could not be regarded as an effective remedy against the municipality’s refusal to execute the judgment of 1997 because it could result only in compensation but could not lead to the execution of the 1997 judgment. Furthermore, even if such an action were to be allowed and

compensation awarded, there would be no guarantee that the municipality would pay this compensation since Bulgarian legislation did not provide for remedies against the refusal of a State body to execute a judgment.

40. The Court reiterates that under Article 35 § 1 of the Convention the only remedies required to be exhausted are those that are effective and capable of redressing the alleged violation (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II). In the present case the applicant's complaint is that the municipal authorities failed to execute the 1997 judgment in her favour and thus impeded her from peacefully enjoying her possessions. The Court considers that an action under the SMRDA could not have remedied the applicant's grievances because it could only provide her with monetary compensation but could not directly compel the authorities to take the action required to secure compliance with the final court judgment of 1997 (see, *mutatis mutandis*, *Iatridis v. Greece* [GC], no. 31107/96, § 47, ECHR 1999-II; *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 116, 9 June 2005; and *Lyubomir Popov v. Bulgaria*, § 106, cited above).

41. Furthermore, the Government failed to present copies of any domestic court judgments where awards had been made under the SMRDA providing redress in cases of delayed restitution under the 1992 Law. The Court also notes that an action under the SMRDA has not been found to constitute an effective remedy in cases of delays in the restitution of nationalised agricultural land, notably, having regard to the lack of established practice emanating from the domestic courts (see *Lyubomir Popov*, §§ 104-107; *Naydenov*, § 59; and *Mutishev*, §§ 103-11, all cited above).

42. As to the Government's argument that the applicant had failed to initiate certain procedures under the BPA, the Court notes that after the 1997 judgment became effective, the applicant requested that the property be registered in the land register (see paragraph 12 above), which at the relevant period was governed by section 32 of the BPA (see paragraphs 14 and 35 above), brought a number of actions aimed at the execution of the judgment (see paragraphs 16 and 17 above) and actively participated in the procedure of 2004 by filing requests and appealing against the proposed amendments to the land register (see paragraphs 19 to 22 above).

43. Under these circumstances, the Court considers that the applicant made normal use of the remedies available to her.

44. Accordingly, the Court dismisses the Government's objection. It further finds that the complaint under Article 1 of Protocol No. 1 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

a. The Government

45. The Government contended that the applicant's rights under Article 1 of Protocol No. 1 had not been infringed and that, although she had faced certain difficulties in relation to the restitution of her property, she had not suffered an excessive burden. They contended that the State had a wide margin of appreciation in the field of construction and planning, therefore the authorities' actions had not run counter to the Convention. The Government further argued that the applicant's ownership rights had been restored by virtue of the 1997 judgment and had subsequently never been challenged by the authorities. There was no reason for the applicant to believe that all ensuing procedures would not be finalised. The Government did not dispute the applicant's allegation that the property had never been entered in the land register and admitted that the applicant had been unable to take possession of it. They argued, however, that her property rights had not been violated as she could dispose of the plot as she wished. In any event, the municipal authorities had acted with due diligence and expedience – procedures for the property's registration in the land register and striking it out of the municipal property register had started shortly after the judgment of 1997. The delay in the registration had been due to technical errors in the 1995 plan and the fact that the applicant had not returned the compensation which her father had received in 1956 for the expropriated property (see paragraph 6 above). Furthermore, it was normal that the authorities needed time to enter the applicant's property in the relevant registers and maps, given that the events dated back forty years and that the cadastral and zone planning maps had been changed during that period.

b. The applicant

46. The applicant submitted that the 1997 judgment had still not been executed to date and that she is unable to use her property. This situation had been ongoing for a period of more than twelve years – from the final judgment of 1997 until the present day. The municipality was under an obligation to register the property with the boundaries stipulated in the 1997 judgment. Instead of doing so in good time, it had initiated a procedure for an amendment to the land register only in 2004, seven years after the restitution of the property to the applicant. Despite these amendments, the property remained unregistered until today. Even assuming that following the 2004 amendments, the property was entered in the land register, there was a delay of seven years between this entry and the restoration, which

could not be justified. Thus, although the applicant's ownership of the property had not been challenged by the municipality, the refusal to register the property in the land register infringed her rights under Article 1 of Protocol No. 1 because without this registration she could not obtain an up-to-date plan of the property, which was necessary for the sale of the property or for the undertaking of any construction work on it.

47. In so far as the Government claimed that the delays in the registration were partly due to the technical errors in the 1995 plan, she argued that as a party to the restitution proceedings, the municipality could have challenged the expert's opinion or the 1995 plan but had failed to do so. Neither had it alleged that the plan contained technical errors or omissions, or sought to establish different boundaries of the property. As to the argument concerning her failure to return the compensation received for the expropriation, she contended that the municipality never requested the return of the compensation, nor challenged her ownership rights on that basis.

2. The Court's assessment

a. Application of Article 1 of Protocol No. 1

48. The Court notes that by virtue of the final judgment of the Plovdiv Regional Court of 23 October 1997, ownership of one quarter of a plot of 1,500 square metres was restored to the applicant (see paragraph 10 above).

49. In so far as the Government may be understood as arguing that the Regional Court wrongly applied the 1992 Law and, in particular, section 7(2) thereof (see paragraph 28 above) since it did not take into account the applicant's failure to return the compensation received by her father in 1956, the Court observes that it was for the relevant mayor, who was party to the judicial proceedings, or for the Regional Court to address that issue in the course of the relevant proceedings. The Court will revert to this matter later (see paragraph 56 below).

50. Since the 1997 judgment became final and the applicant's ensuing property rights were never challenged in any domestic proceedings, the Court finds that she has a "possession" within the meaning of Article 1 of Protocol No. 1.

b. Compliance with Article 1 of Protocol No. 1

51. The Court notes that the Government did not dispute the applicant's ownership rights over the property, nor her allegations that the judgment of 1997 had remained unenforced and that at present she was still experiencing obstacles to her full possession and enjoyment of those ownership rights. They did not provide any evidence that the property had been struck out of

the municipal property register and that possession had consequently passed to the applicant.

52. In these circumstances, while it is unclear whether and to what extent the 2004 amendments to the land register (see paragraphs 18 to 24 above) resolved the problems encountered by the applicant, the Court will proceed on the basis that between the judgment of 1997 and the present time there has been a delay of about thirteen years in the process of restoration of the applicant's rights over the property and her full enjoyment of these rights (see paragraphs 10, 46 and 47 above).

53. A failure to enforce, for reasons imputable to the State, a final decision recognising title to property or unjustified delay in the enforcement of such a decision constitutes interference with the peaceful enjoyment of possessions and may amount to a violation of Article 1 of Protocol No. 1 to the Convention (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*, cited above, §§ 72 and 85; *Mutishev and Others*, cited above, §§ 138 and 146; and *Lyubomir Popov*, cited above, § 131).

54. The present case is similar to the above-mentioned cases. The Court must therefore determine whether the delay in the full execution of the judgment of 1997 and the obstacles faced by the applicant in that respect were imputable to the respondent State and, if so, whether the resulting interference with her property rights was, as alleged by her, unlawful and imposed on her a disproportionate and excessive burden (see *Beyeler v. Italy* [GC], no. 33202/96, §§ 110 *in fine*, 114 and 120 *in fine*, ECHR 2000-I, and *Kirilova and Others*, cited above, § 106).

55. In the present case the explanation offered by the Government with respect to the delay in the property's registration in the land register was that the applicant had failed to return the compensation received by her father in 1956 and that there had been technical errors and omissions in the 1995 plan as a result of normal difficulties associated with the complex restitution process. No other justification has been offered.

56. The Court observes that the fact that the applicant had not returned the property received in compensation in 1956 was never invoked against her in any domestic proceedings and, moreover, was never cited by the municipality as a reason for their failure to execute the 1997 judgment (see paragraph 11 above). The municipality was free to raise the issue in the proceedings that led to the 1997 judgment, or to bring an action against the applicant after that. As they never did so, it cannot be considered that they were entitled to delay the execution of the 1997 judgment for essentially undisclosed reasons.

57. As to the objective difficulties relied upon by the Government, the Court is mindful that the execution of a judgment for the restitution of a property expropriated several decades earlier may require more time, as

there may be complications of a technical nature to be dealt with (see, *mutatis mutandis*, *Lyubomir Popov*, cited above, § 122). It is also true that the municipal authorities invested some effort in finding a solution to the situation which arose as a result of inconsistencies in the 1995 plan (see paragraphs 13 to 15 above) and to register the applicant's property within the boundaries determined by the judgment of 1997. These efforts, however, do not seem to have brought about the desired results as the property remained unregistered for a very long period of time, namely, thirteen years, and it is still unclear whether such registration has ever taken place. Moreover, as the Government appear to have confirmed, the authorities have not officially allowed the applicant to take possession of the property.

58. In so far as the Government suggested that the problems in connection with the full execution of the 1997 judgment were due to the applicant's failure to undertake steps to that effect or to duly and timely cooperate with the authorities, the Court notes that this assertion is not supported by convincing evidence. Moreover, the Court reiterates that even though it may be expected that an applicant undertake certain procedural steps in connection with the execution of a final judgment in his or her favour, this does not relieve the authorities of their obligation under the Convention to take timely action of their own motion, on the basis of the information available to them, with a view to honouring the judgment against the State. Where a judgment is delivered in favour of an individual against the State, the burden to comply with such a judgment lies primarily with the State authorities, which should use all means available in the domestic legal system in order to speed up the enforcement, thus preventing violations of the Convention (see *Burdov v. Russia (no. 2)*, no. 33509/04, §§ 69 and 98, ECHR 2009-...).

59. In view of the above, the Court finds that the delay in the execution of the 1997 judgment was imputable to the authorities and constituted an interference with the applicant's right to peaceful enjoyment of her possessions, which was not justified as it did not have a clear legal basis and the Government have not shown before the Court that there was a justification in pursuance of a legitimate aim.

60. Accordingly, there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

61. The applicant also alleged that there had been a violation of Article 13 of the Convention as she lacked an effective remedy for the situation in issue, especially considering that Bulgarian law did not provide for enforcement of judgments against State bodies.

62. 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.”

63. The Government did not comment.

A. Admissibility

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

B. Merits

65. The Court reiterates that Article 13 of the Convention guarantees the availability, at the national level, of a remedy to enforce the substance of Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an “arguable complaint” under the Convention and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision. The scope of the obligation under Article 13 varies depending on the nature of the applicant’s complaint under the Convention. Nevertheless, the remedy required by Article 13 must be “effective” in practice as well as in law; in particular, its exercise must not be unjustifiably hindered by the acts or omissions of the authorities of the respondent State (see, among other authorities, *Aksoy v. Turkey*, 18 December 1996, § 95, *Reports of Judgments and Decisions* 1996-VI and *Kudła v. Poland* [GC], no. 30210/96, § 157, ECHR 2000-XI).

66. The Court refers to its finding that in the particular circumstances of the present case an action under the SMRDA could not remedy the applicant’s specific complaint (see paragraphs 38 to 44 above). Moreover, although the applicant availed herself of the procedures under the BPA, her efforts were in vain. Accordingly, the applicant had no effective remedies within the meaning of Article 13 of the Convention.

67. The Government have not argued that Bulgarian law provides any other means whereby the applicant could have obtained execution of the 1997 judgment and compensation in that respect.

68. It thus appears, in particular, that the Bulgarian restitution legislation, including the 1992 Law, does not provide for any specific procedure for the execution of decisions or judgments restoring expropriated property to its former owners. Persons encountering obstacles such as those at issue in the present case cannot obtain the assistance of an

enforcement officer and the possibility of filing administrative complaints does not appear to have provided the applicant with effective redress.

69. In view of the above, the Court finds that there has been a violation of Article 13 of the Convention in conjunction with Article 1 of Protocol No. 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

70. 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*

71. The applicant, relying on the cases of *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, ECHR 2001-I) and *Kehaya and Others v. Bulgaria* (just satisfaction), nos. 47797/99 and 68698/01, 14 June 2007), requested that the State take all necessary measures in order to restore in full her ownership rights over the property in compliance with the judgment of 23 October 1997.

72. She further claimed 513,270 Bulgarian levs (BGN), the equivalent of 262,434.81 euros (EUR), in loss of rent. She also claimed BGN 321,423.76, the equivalent of EUR 164,343.89, in interest on the above amount. She presented an expert opinion on the rent she would have received for a plot of 1,500 square metres in Plovdiv for the period between 1 November 1997 and 10 June 2009.

73. The Government stated that, in contrast to the case of *Brumărescu*, cited above, where the property had never been returned to the applicant, in the present case the 1997 judgment had had the effect of restoring the applicant's ownership and therefore, there had been no obstacles to her renting it out, for example. In any event, the applicant's claim was excessive.

74. The Court reiterates that a judgment in which the Court finds a breach of the Convention imposes on the respondent State a legal obligation to put an end to that breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. If the nature of the breach allows for *restitutio in integrum*, it is for

the respondent State to effect it. If, on the other hand, national law does not allow, or allows only partial, reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B, and *Brumărescu*, cited above, §§ 19-20).

75. In view of its findings in paragraphs 60 and 69 above, the Court considers that the most appropriate reparation in the present case would be the removing of all obstacles to the applicant's full possession and enjoyment of her rights as an owner in accordance with the judgment of 23 October 1997. Thus, the applicant would be put as far as possible in a situation equivalent to the one in which she would have been, had there not been a breach of Article 1 of Protocol No. 1.

76. Despite the Court's specific request, the parties have failed to inform it of the developments, which have occurred since 2004. The Court is thus not aware whether the property at issue has in fact been transferred to the applicant. If the property has not been so transferred, given that the Government have not argued that there exist insurmountable obstacles to such a transfer and provided that the applicant cooperated with the authorities, it is not unreasonable to expect that the removal of all obstacles to the applicant's full possession should be completed without delay.

77. As to the claimed loss of rent, the Court notes, on the one hand, that the Government have not argued that Bulgarian law provides for means whereby the applicant could obtain compensation in that respect. The Court has not been presented with any evidence of an established practice of the domestic courts in granting compensation in proceedings under the SMRDA or in any other proceedings. The Court, therefore, does not find it established that in the present case it was open to the applicant to seek and receive compensation for loss of rent in proceedings before the domestic courts. On the other hand, the Court is unable to speculate as to whether the applicant would have rented out the property and received rent for it during the whole period between 1997 and 2009 or, for example, would have preferred to use it for her own needs, sell it or not use it at all. It also takes into account that the rent calculation concerned the renting out of the whole property, while the applicant owns only part of it and therefore, would be entitled to the receipt of only part of the rent. Furthermore, the Court notes that even if the applicant had rented out the property, she would have probably incurred expenses for its maintenance and taxation, as any revenue from rent would also have been subject to taxation (see *Popov v. Moldova* (no. 1) (just satisfaction), no. 74153/01, § 13, 17 January 2006, and *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98 et al., § 31, 14 June 2007).

78. In conclusion, the Court does not find it to have been established with certainty that the applicant would have been able to let the property up

to today and to receive the claimed market rent. The Court nevertheless considers that the applicant has suffered a certain loss of opportunity on account of not having been able to fully enjoy her property for a long period of time. In view of these considerations and ruling on equitable basis, the Court awards the applicant EUR 2,000 under this head.

2. Non-pecuniary damage

79. The applicant also claimed EUR 10,000 in respect of non-pecuniary damage for the anguish and suffering caused as a result of the alleged violations.

80. The Government contested the claim as excessive and unfounded.

81. The Court finds that the applicant must have suffered anguish and frustration as a result of the violations found. Deciding on an equitable basis, it awards her EUR 2,200 under this head.

B. Costs and expenses

82. The applicant claimed EUR 4,200 in lawyer's fees for the proceedings before the Court; EUR 50 for postal expenses and EUR 30 for office materials. She submitted an agreement with her legal representatives and a time-sheet for 60 hours of work at an hourly rate of EUR 70. She requested the amounts awarded under this head to be paid directly into the bank accounts of her legal representatives.

83. The Government contested these claims as excessive.

84. 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 were reasonable as to quantum. The Court finds that the costs for postal expenses and office materials and part of the lawyers' fees have been covered by the legal aid which was granted to the applicant. Having regard to this fact, the Court awards EUR 1,500 under this head.

C. Default interest

85. 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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 2,200 (two thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses to be paid directly into the bank accounts 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 claim for just satisfaction.

Done in English, and notified in writing on 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President