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

FIRST SECTION

CASE OF ARSOVSKI v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 30206/06)

JUDGMENT
(Merits)

STRASBOURG

15 January 2013

FINAL

15/04/2013

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

In the case of Arsovski v. the former Yugoslav Republic of Macedonia,

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

Isabelle Berro-Lefèvre, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 11 December 2012,

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

PROCEDURE

1. The case originated in an application (no. 30206/06) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Macedonian nationals, Mr Stojko Arsovski, Mr Stefan Arsovski and Mrs Verka Arsovska ("the applicants"), on 7 July 2006. The application was also submitted on behalf of Mr Milan Arsovski, who had died on 7 October 2004. By submissions received on 24 January 2011, the Court was informed that Mr Stefan Arsovski had died on 26 March 2007. His widow, Mrs Dragica Arsova, and his daughters, Mrs Karolina Joseva and Mrs Kalinka Stefanovska, applied to continue the application in his name.

2. The applicants were represented by Ms V. Veselinovska, a lawyer practising in Probištip. The Macedonian Government ("the Government") were represented by their former Agent, Mrs R. Lazareska Gerovska, and subsequently by their present Agent, Mr K. Bogdanov.

3. The applicants alleged, in particular, that the respondent State had deprived them of the peaceful enjoyment of their possessions.

4. On 27 January 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. On 1 February 2011 the Court changed the composition of its Sections (Rule 25 § 1) and this case was assigned to the newly composed First Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1950, 1947 and 1943 respectively. Mr Stojko Arsovski and Mrs Verka Arsovska live in Kratovo and Probištip respectively.

A. Civil proceedings concerning the determination of title to a plot of land

7. Since 1952 the applicants' predecessor had title to a plot of land no. 1339, a pasture ("the plot"). On the basis of a gift contract of 1968 the plot in question was transferred into the possession of Mr Stojko Arsovski and subsequently into the possession of all applicants. In 1973 the State was recorded in the land registry, in error, as the owner of the plot. On 1 November 1977 the City Council of Kratovo authorised company S. ("the company") to use the plot for an intensive agricultural development, but the company had never engaged in any such activity. On 17 April 1996 the applicants and Mr Milan Arsovski brought a civil action against the State seeking recognition of the title to several plots of land, including plot no. 1339. In May 1996 the then competent Ministry gave permission to the company to carry out geological research on the plot in question. On 19 March 2002 the Kratovo Court of First Instance ("the first-instance court") upheld the applicants' claim recognising their title to the plot in question. On 26 June 2002 the Skopje Court of Appeal confirmed the first-instance court's decision of 19 March 2002 establishing that until then the claimants had always had actual possession of the plot.

B. Administrative proceedings for expropriation of the plot

8. On 26 July 2002 the company requested that the State expropriate the plot in order for it to extract mineral water. In support of its request, it submitted, *inter alia*, a copy of a concession contract (*договор за концесија*) signed by the State on 8 May 2000 under which the company had been authorised to exploit geothermal mineral water in the plot for a renewable period of thirty years. The company undertook, in return, to pay certain compensation to the State (the compensation was twofold: a fixed annual amount and a percentage of the profits from the sale of the mineral water).

9. On 9 December 2002 the Kratovo Office of the Ministry of Finance ordered expropriation of the plot so that the company could construct a pit

to extract the mineral water. The expropriation order was based, *inter alia*, on sections 2 § 1 (6) and 3 § 1 (3) of the Expropriation Act (“the Act”).

10. The applicants and Mr Milan Arsovski appealed against the expropriation order, arguing that the extraction of mineral water had not been specifically mentioned in any act or plan concerning the plot and that the applicable legislation had provided for partial, instead of for full, expropriation in the event of research into and exploitation of mineral resources, as in their case. In this connection they referred to sections 4 and 6 of the Act.

11. On 2 June 2003 the Government Appeal Commission (“the Commission”) dismissed the appeal, finding that the company had submitted the required documents and that the exploitation of mineral water had been provided for in a decision of the City Council dated 1996. Relying on section 2 § 1 (6) of the Act, the Commission stated that the expropriation in the applicants’ case had been in the public interest. It further stated that the company, as the beneficiary of the expropriation, should pay compensation to the applicants.

12. The applicants and Mr Milan Arsovski lodged an appeal with the Supreme Court on points of law, arguing that they had been deprived of the peaceful enjoyment of their possessions contrary to the Constitution and the Act. They complained that the Commission had not addressed their arguments that the company had not been entitled to request full expropriation of the plot, but rather only partial expropriation under section 4 (2) of the Act. In this connection they reiterated that a three-year lease contract, as provided for in section 6 of the Act, should have been applied instead of the full expropriation, which had entailed loss of the title to the plot, contrary to the principle of legal certainty.

13. On 16 November 2005 the Supreme Court dismissed the appeal, finding no errors in the facts or law. Noting the applicants’ complaints, the court reiterated that the expropriation of the plot had been in the public interest, namely with a view to the construction of objects for research into and the exploitation of natural resources; that the company had submitted the required documents; and that compensation had been determined in non-contentious proceedings (see paragraph 16 below). The decision was served on the applicants on 9 January 2006.

14. On 11 April 2006 the public prosecutor notified the applicants that there were no grounds to lodge a legality review request (*барање за заштита на законитоста*) with the Supreme Court.

15. According to an extract from the Land Register of 7 May 2008, the company had title to the plot. According to another extract dated 31 December 2010, the respondent State was indicated as the owner (*сопственик*) of the plot and the company as the beneficiary (*корисник*).

C. Non-contentious proceedings for the determination of compensation

16. In the meantime, on 23 November 2004, the first-instance court determined, on the basis of an expert report, the amount of compensation which the company was required to pay to the applicants in return for the expropriated plot. The joint award was fixed at the equivalent of 880 euros (EUR). This figure corresponded to the market value of the plot determined on the basis of the following parameters: its location, size, the quality of the land, its suitability for construction, and access to a road and different installations. The expert report also contained information about the level of investment by the company in the plot regarding the exploitation of mineral water. The applicants were ordered to pay the equivalent to EUR 475 for the costs incurred by the company. The decision was confirmed by the Skopje Court of Appeal on 15 September 2005.

D. Proceedings before the Constitutional Court concerning the constitutionality of certain provisions of the Act (U.br.200/2007)

17. Two individuals, one of whom was Mrs Verka Arsovska, one of the applicants in the present case, lodged an application with the Constitutional Court challenging the constitutionality of, *inter alia*, section 3 § 1 (3) of the Act. In an *ex nunc* decision of 11 February 2009 the court declared that provision unconstitutional, finding that although the State had a certain margin of appreciation in defining the public interest, it could not exercise it in a manifestly unreasonable way. In this connection it considered it insufficient that the Act simply enumerated the objects whose construction was regarded as being in the public interest. It further stated that the construction of objects in the interest of private persons, as defined in urban plans, could not always be construed as being in the public interest. Relying on Articles 8 § 1 (6) and 30 of the Constitution, it concluded that the State could expropriate a property only after other less restrictive measures, such as a long-term lease or concession (*концесија*), had been exhausted. To claim otherwise would mean that the commercial interests of private persons would prevail over the public interest. It concluded that

> “... under the disputed provisions, a property may always and on every occasion, purportedly in the interest of the general public, be confiscated for the benefit of economically powerful recipients. This results in the minimisation of the interests of the owner and calls into question the right to possession safeguarded by the Constitution”.

E. Information in the press about the application

18. By a letter of 3 June 2011 the respondent Government communicated to the Court an article published on that day by *Fokus*, a weekly newspaper, in which a journalist, whose name was indicated as the

author of the text, described the factual background of the case and discussed the possible business and political interests involved. The article noted that:

> "... in the application, which the Strasbourg Court has accepted, the lawyers stated that the entire proceedings were contrary to the law ..."

19. The article went on to say:

> "After almost a decade, the Strasbourg Court will finally decide how much money the Macedonian State will be required to pay for unlawfully confiscating private property, allegedly in the public interest. The decision of the Strasbourg Court comes after an unsuccessful attempt at a friendly settlement between the owners of the land where the spring of Dobra Voda (the brand name of the mineral water extracted from the plot) is located, in the Kratovo region, and the Government – as required by the Court after a finding that the application was admissible and that the law had been violated ...
>
> After they (the applicants) introduced the application, the Strasbourg Court informed them that it was admissible. It further ordered that the case be decided by means of a friendly settlement, that the amount of just satisfaction be determined, and that it would decide the case if the parties would not settle. On the basis of the Court's instruction, the Government ordered an expert examination in order to determine the amount of just satisfaction. The expert proposed that the families be awarded EUR 1,600. It was clear that this proposal would not be accepted. Consequently, after it was submitted, the Strasbourg Court would assess how much the land with the source of mineral water was worth."

II. RELEVANT DOMESTIC LAW

A. Constitution of 1991

20. Article 8 § 1 (6) of the Constitution defines the legal protection of possessions as a fundamental value of the constitutional order.

21. Article 30 guarantees the right to peaceful enjoyment of possessions and provides, *inter alia*, that no one can be deprived of his or her possessions except in the public interest and as specified by law.

B. Expropriation Act, with the amendment of 1998 (Official Gazette nos. 33/1995 and 20/1998)

22. Section 1 of the Act provided for *inter alia* the expropriation of a land for the purpose of construction of objects in the public interest.

23. Under section 2 § 1 of the Act, the development and rational use of land, as well as the environmental protection by way of construction of objects and structures as specified in urban plans was regarded as being in the public interest. Sub-section 6 of that paragraph referred explicitly to the

construction of objects and structures for research into and exploitation of natural resources.

24. Section 3 § 1 (3) of the Act provided that expropriation could be ordered for the benefit of legal and physical persons with a view to the construction of objects in the public interest, as specified in section 2 of the Act.

25. Under section 4 of the Act, full expropriation (*потполна експропријација*) entailed loss of title to the property subject to expropriation. Partial expropriation (*непотполна експропријација*) imposed restrictions on the right to property by introducing an easement, a lease or a temporary restriction on the right to use it.

26. Section 6 of the Act provided for a lease in cases of research into and exploitation of natural resources. Such a lease was imposed with a limited duration, which could not be longer than three years.

C. Mineral Resources Act (Official Gazette nos. 18/99 and 29/2002)

27. Under section 4 § 1 (5) of the then valid Mineral Resources Act, the mineral water was regarded a mineral resource in public interest. Under section 5, mineral resources were State-owned irrespective of title to the land in question.

28. Under section 11, a detailed geological research into and exploitation of mineral resources were subject to a concession contract.

29. Section 86-b provided for a lease in cases of geological research into and exploitation of mineral resources found in a State-owned land. The land could be leased to a concession holder in return for compensation equal to the average rent paid for a similar land in the area concerned.

D. Civil Proceedings Act of 2005

30. Section 400 of the Civil Proceedings Act of 2005 provides that a case may be reopened if the European Court of Human Rights has given a final judgment finding a violation of the Convention or its Protocols ratified by the respondent State.

E. Administrative Disputes Act of 2006

31. Section 51 of the Administrative Disputes Act (*Закон за управните спорови*, Official Gazette no. 62/2006), provides for the application of the Civil Proceedings Act to proceedings concerning administrative disputes, in so far as these proceedings are not regulated by the Administrative Disputes Act.

F. Rules of Court of the Constitutional Court

32. According to section 81 §§ 1 and 2 of the Rules of Court of the Constitutional Court, a person whose rights have been violated by a final decision given on the basis of a law which, by an *ex tunc* decision of the Constitutional Court, has been declared unconstitutional, is entitled to request that the competent body revoke that decision. The Constitutional Court may also order, under certain circumstances, that the effects of the abrogated law be removed by reinstatement of the previous state, an award of compensation, or by other means.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

33. The applicants complained under Article 6 of the Convention that the respondent State, by expropriating the plot for the company's benefit, deprived them of the peaceful enjoyment of their possessions. The Court, being master of the characterisation to be given in law to the facts of the case (see *Dolenec v. Croatia*, no. 25282/06, § 127, 26 November 2009), considers that this complaint should be analysed under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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

1. The victim status of Mr Milan Arsovski

34. The Court notes that Mr Milan Arsovski was party to the domestic proceedings until his death on 7 October 2004. Since he died before the application was introduced before the Court, the applicants had no standing to bring the application on his behalf (see *Ivanovski and Others v. the*

former Yugoslav Republic of Macedonia, no. 34188/03, §§ 16 and 17, 26 November 2009).

35. It follows that, in the part concerning Mr Milan Arsovski, the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. The victim status of Mrs Dragica Arsova, Mrs Karolina Joseva and Mrs Kalinka Stefanovska

36. The Court notes that Mr Stefan Arsovski died on 26 March 2007, that is, after the introduction of the application before the Court. In such circumstances, his widow, Mrs Dragica Arsova, as well as his daughters, Mrs Karolina Joseva and Mrs Kalinka Stefanovska, have the requisite standing under Article 34 of the Convention to continue the application in his name (see *Ivanovski and Others*, cited above, § 18 and *Stojkovic v. the former Yugoslav Republic of Macedonia*, no. 14818/02, §§ 25 and 26, 8 November 2007).

3. The Government's request concerning the alleged abuse of the right of petition

(a) The parties' submissions

37. In a letter of 3 June 2011 the Government submitted that the applicants had violated the rules of confidentiality regarding friendly-settlement negotiations. In support of this assertion they referred to the article published in the weekly newspaper *Fokus*. According to the Government, despite the fact that the article did not disclose the source of the information contained therein, it was clear that that information could have been provided only by the applicants or their representative. Although part of that information was false and had led to frivolous conclusions as to the outcome of the contentious proceedings before the Court, they invited the Court to declare the application inadmissible on the ground of an abuse of the right of petition.

38. The applicants denied that they had disclosed any information concerning the application or the friendly-settlement proposal made by the Government. They submitted that this was confirmed by the false information contained in the article.

(b) The Court's consideration

39. The Court notes that, according to Article 39 § 2 of the Convention, friendly-settlement negotiations are confidential. Rule 62 § 2 of its Rules of Court reiterates this principle and stipulates that no written or oral communication and no offer or concession made within the framework of

friendly-settlement negotiations may be referred to or relied on in contentious proceedings. Noting the importance of this principle, the Court further reiterates that it cannot be ruled out that a breach of the rule of confidentiality might, in certain circumstances, justify the conclusion that an application is inadmissible on the ground of an abuse of the right of application (see *Miroļubovs and Others v. Latvia*, no. 798/05, § 68, 15 September 2009; *Lesnina Veletrgovina d.o.o. v. the former Yugoslav Republic of Macedonia* (dec.), no. 37619/04, 2 March 2010; and *Balenović v. Croatia* (dec.), no. 28369/07, 30 September 2010).

40. The Court considers that direct responsibility of a party for disclosure of confidential information must always be established with sufficient certitude; a mere suspicion does not suffice to find that an application amounted to an abuse of the right of individual application within the meaning of Article 35 § 3 of the Convention (see *Miroļubovs and Others*, cited above, § 66, and *Barreau and Others v. France* (dec.), no. 24697/09, 13 December 2011).

41. Having regard to the facts as described above, the Court finds no evidence that the information contained in the above-mentioned article was disclosed by the applicants or their legal representative. Indeed, the article did not quote the applicants or their representative, nor did it state that the relevant information had been obtained from any of them. The Government did not provide any evidence proving otherwise. Furthermore, as the Government conceded, the article did not contain correct information. The Government's assumptions that the applicants had violated the rules of confidentiality of the friendly settlement negotiations are accordingly unsubstantiated. Consequently, it follows that this objection must be dismissed.

42. The Government did not raise any other objection as to the admissibility of the application.

43. The Court notes that the application 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

1. The parties' submissions

44. The applicants submitted that the expropriation had pursued no public interest, but rather the commercial interest of the company which had obtained the title to it. Furthermore, there had been no relationship of proportionality between the means employed and the aim pursued, nor had a fair balance been struck between the demands of the general interest and the interests of the owners of the plot in question. Referring to section 4 of the

Act and the Constitutional Court's decision, the applicants stated that a less restrictive measure could have been applied in their case, as they had unsuccessfully claimed in the impugned proceedings. Their arguments in this respect remained unaddressed. Lastly, they argued that the compensation awarded to them was below the market value of the plot.

45. The Government submitted that the expropriation had been carried out in accordance with the Act, as in force at the relevant time. The decision of the Constitutional Court post-dated the impugned expropriation and had no bearing on the present case. The aim of the expropriation had been the construction of objects for the exploitation of mineral water, an activity which the Act explicitly specified as being in the public interest. On the basis of the concession agreement, the company, which had been carrying out geological research in the relevant area for many years before the critical date, had been granted permission to exploit the mineral water, which, being a public commodity belonged to the State. The latter had a wide margin of appreciation in choosing the means for achieving the above-mentioned aim. Lastly, the applicants had received compensation that corresponded to the market value of the plot, which amount had been determined on the basis of an expert report produced in court proceedings. The existence of mineral water could not have any bearing on the amount of compensation since the water was State-owned.

2. The Court's assessment

46. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest. The three rules are not, however, distinct in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see *The Holy Monasteries v. Greece*, 9 December 1994, § 56, Series A no. 301-A; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; and *Beyeler v. Italy* [GC], no. 33202/96, § 106, ECHR 2000-I).

(a) Whether there was an interference with the applicant's right to the peaceful enjoyment of his possessions

47. The Court notes that the respondent State seized the plot of land in question after the domestic courts, by a final decision of 26 June 2002, had declared the applicants the owners. It further observes that it was not

disputed between the parties that the seizure amounted to an interference with the applicants' right to the peaceful enjoyment of their possessions.

48. The Court must therefore determine whether the deprivation complained of was justified under Article 1 of Protocol No.1 to the Convention, notably whether it complied with the principle of lawfulness, whether it was in the public interest and pursued a legitimate aim by means reasonably proportionate to the aim sought to be realised (see *Frendo Randon and Others v. Malta*, no. 2226/10, §§ 51-53, 22 November 2011).

(b) Whether the deprivation of possessions was justified

i. "Subject to the conditions provided for by law"

49. The Court recalls that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law" (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 133, ECHR 2005-XII (extracts)).

50. Turning to the facts of the case, the Court observes that the applicants were dispossessed on the basis of the Act, under which expropriation could be ordered for the construction of objects for research into and the exploitation of mineral resources (see paragraphs 22 and 23 above). The Constitutional Court, posterior to the applicants' case, in its decision of 2009, declared unconstitutional the statutory provision according to which the expropriation could be ordered for the benefit of private persons and it did not affect the right of the State, as such, to seize property for the purpose of research into and the exploitation of mineral resources (see paragraph 17 above).

51. The imposition of the seizure must be therefore considered lawful within the meaning of Article 1 of Protocol No. 1.

ii. "In the public interest"

52. The notion of "public interest" is necessarily extensive. In particular, the decision to enact laws expropriating property will commonly involve consideration of political, economic and social issues. The Court finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one and will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see *Urbárska Obec Trenčianske Biskupice v. Slovakia*, no. 74258/01, § 113, 27 November 2007).

53. In the present case, the Court notes that the Act explicitly specified the construction of objects for the exploitation of natural resources as being in the public interest. Section 2 § 1 (6) of the Act was not the subject of the

review by the Constitutional Court in its decision of 2009 (see paragraph 17 above). The public interest underlying the expropriation of the applicants' land was also confirmed by the domestic authorities in the course of the expropriation proceedings (see paragraphs 11 and 13 above). The Court sees no reason to find otherwise. The seizure of the applicants' property was effected in pursuance of a legitimate aim of public interest, namely exploitation of mineral water, a State-owned public commodity (see paragraphs 27 above), of which the community at large would have direct use and benefit.

54. Accordingly, the interference with the applicants' rights under Article 1 of Protocol No. 1 was "in the public interest".

iii. Whether the impugned measure was proportionate

55. The Court must examine whether an interference with the peaceful enjoyment of possessions strikes the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, or whether it imposes a disproportionate and excessive burden on the applicant (see *Pietrzak v. Poland*, no. 38185/02, § 103, 8 January 2008). Despite the margin of appreciation given to the State the Court must, in the exercise of its power of review, determine whether the requisite balance was maintained in a manner consonant with the applicant's right to property (see *Rosinski v. Poland*, no. 17373/02, § 78, 17 July 2007). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 to the Convention as a whole, including therefore the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, Series A no. 332, § 38, and *The Former King of Greece and Others v. Greece*, [GC], no. 25701/94, § 89). Thus the balance to be maintained between the demands of the general interest of the community and the requirements of fundamental rights is upset if the person concerned has had to bear a "disproportionate burden" (see *The Holy Monasteries v. Greece*, cited above, §§ 70-71).

56. Compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicant. In this connection, the taking of property without payment of an amount reasonably related to its value will normally constitute a disproportionate interference that cannot be justified under Article 1. That Article does not, however, guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for

less than reimbursement of the full market value (see *The Holy Monasteries*, cited above, §§ 70-71; *Papachelas v. Greece* [GC], no. 31423/96, § 48, ECHR 1999-II; and *Bistrović v. Croatia*, no. 25774/05, § 34, 31 May 2007).

57. Bearing in mind the specific features of the present case and making its assessment as to whether the national authorities struck a fair balance between the general interest of the community and the applicants' right to the peaceful enjoyment of their possessions, the Court gives decisive importance to the following factors.

58. The Government's action represented the most serious interference with the applicants' right under Article 1 of Protocol No. 1, since it concerned expropriation of their property. Thus, the consequences of the expropriation for the applicants' property rights required a careful examination of all relevant factors by a court dealing with the case to ensure that the requirements of Article 1 of Protocol No.1 were complied with.

59. The expropriation order was made at the company's request with the purpose of researching into and exploiting mineral water beneath the land in question. Throughout the impugned proceedings the applicants argued that partial expropriation should have been applied in their case, instead of full expropriation. In this connection, their main objection was that section 6 of the Act (see paragraph 26 above) had provided for a lease in cases of research into and exploitation of mineral resources, as was their case. The domestic authorities failed to address this complaint, which was central to the application before the Court. They did not explain whether, and if so, how, the seizure of the applicants' land, as the most drastic measure, had been proportionate to the aim sought to be achieved. Neither the domestic authorities nor the Government in the proceedings before the Court gave any reason why a lease, as less restrictive for the applicants' property rights, was inappropriate in their case, although domestic legislation provided for such a possibility and which through subsequent jurisprudence became a requirement (see, *mutatis mutandis*, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 129, 25 October 2012).

60. The Court also places emphasis on the fact that the beneficiary of the expropriation was not only the State, which would receive some compensation for the exploitation of the geothermal mineral water on the plot of land owned by the applicants, but rather a private company which through commercial means may profit from the expropriation. In the domestic proceedings it was at no stage explained why the State's interest in exploiting the mineral water in the public interest would necessitate the expropriation of the applicants' property in the interest of a private entity.

61. Furthermore, the Court considers that the compensation awarded by the domestic courts is insufficient to offset the burden borne by the applicants. In this connection it notes that the domestic authorities did not take into consideration the existence of mineral water in calculating the expropriation compensation (see paragraph 16 above). The Court is aware

that under national law the mineral water to be exploited from the applicants' property is a State-owned public commodity. Nevertheless, when exploited for commercial purposes the present case shows that this may bring a profit to the owner of the plot concerned. The Court has already found that the total failure to take into account the specific features of the properties in question when ascertaining appropriate compensation had upset the requisite fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see, *mutatis mutandis*, *Kozacıoğlu v. Turkey* [GC], no. 2334/03, §§ 65-73, 19 February 2009). Furthermore, the applicants were deprived of considerable part of the award given the court's order that they pay the trial costs incurred by the company in the non-contentious proceedings (see, *mutatis mutandis*, *Perdigão v. Portugal* [GC], no. 24768/06, §§ 67-79, 16 November 2010.

62. In view of the foregoing, the Court finds that the expropriation of the applicants' land made them bear a burden which was excessive and disproportionate to the aim sought to be achieved and accordingly in violation of their right to the peaceful enjoyment of their possessions, as guaranteed by Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicants claimed EUR 500,000 in respect of pecuniary damage. According to them, this figure represented a reasonable share of the company's income obtained since 2 June 2003, the date when the expropriation order became final. In this connection, they submitted copies of invoices relating to the company's daily income obtained from the sale of mineral water, as well as an expert report for 2003 relying on the invoices produced in other court proceedings. They further specified that any rent which they would have obtained had they leased the land under section 4 § 2 of the Act would have also included a share of the company's income.

65. They further claimed EUR 8,000 in respect of non-pecuniary damage for mental suffering and distress. In this connection, they referred to several sets of court proceedings involving the company and the applicants, which concerned various claims related to the plot in question. The

applicants requested that any money awarded should be paid into the bank account of Mrs Verka Arsovska.

66. The Government contested the applicants' claim as unsubstantiated and excessive. They further maintained that there was no causal link between the pecuniary damage claimed and the alleged violation. They submitted that the applicants could not have any claim in respect of the mineral water, which was State-owned. The expert report to which they referred could not serve as a basis for calculating any pecuniary damage. As to the latter, it was a rough estimation made by the applicants.

67. In the circumstances of the case the Court considers that the question of pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

68. On the other hand, the Court considers that the applicants must have sustained non-pecuniary damage, such as distress resulting from the lack of respect for their rights guaranteed under Article 1 of Protocol No. 1. Ruling on an equitable basis, it awards to the applicants Mr Stojko Arsovski and Mrs Verka Arsovska EUR 3,000 each and EUR 3,000 jointly to Mr Stefan Arsovski's heirs, Mrs Dragica Arsova, Mrs Karolina Joseva and Mrs Kalinka Stefanovska, in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

69. The applicants also claimed EUR 14,442 for the costs and expenses incurred before the domestic courts in the other proceedings involving the company. Some of these claims were supported by copies of payment slips and relevant court decisions. This figure also included costs and expenses incurred in the proceedings before the Court. However, the applicants did not specify the particular amount claimed in the latter context, nor did they provide any supporting documents.

70. The Government contested the claim as unsubstantiated in respect of the costs and expenses incurred in the proceedings before the Court, and otherwise as unrelated to the impugned proceedings in the present case.

71. 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 (see *Kostovska v. the former Yugoslav Republic of Macedonia*, no. 44353/02, § 62, 15 June 2006).

72. In the present case, regard being had to the documents in its possession and the above criteria, the Court rejects the applicants' claim for costs and expenses in the domestic proceedings, which did not directly concern the application submitted to it. It is true that those proceedings were

related, to a certain extent, to the plot of land in question, but they were inapt as a means of providing any redress for the violation found (see *Milošević v. the former Yugoslav Republic of Macedonia*, no. 15056/02, § 34, 20 April 2006).

73. The Court further observes that the applicants did not specify or provide any supporting documents in relation to the costs and expenses incurred in the proceedings before it; it therefore rejects the claim under this head (see *Parizov v. the former Yugoslav Republic of Macedonia*, no. 14258/03, § 72, 7 February 2008).

C. Default interest

74. The Court considers it appropriate that the default interest rate 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*

   (a) that the respondent State is to pay the applicants, 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 the national currency of the respondent State at the rate applicable at the date of settlement, which should be paid into the bank account of Mrs Verka Arsovska:

      (i) EUR 3,000 (three thousand euros) to Mr Stojko Arsovski and Mrs Verka Arsovska each, plus any tax that may be chargeable, in respect of non-pecuniary damage;

      (ii) EUR 3,000 (three thousand euros) jointly to Mr Stefan Arsovski's heirs, Mrs Dragica Arsova, Mrs Karolina Joseva and Mrs Kalinka Stefanovska, plus any tax that may be chargeable, in respect of non-pecuniary damage;

      (iii) dismisses the remainder of the applicants' claim for just satisfaction as regards non-pecuniary damage;

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

4. *Rejects* the applicants' claim for costs and expenses;

5. *Holds* that the question of the question of pecuniary damage under Article 41 of the Convention is not ready for decision,

and accordingly,

(a) *reserves* the said question in whole;

(b) *invites* the Government and the applicant to submit, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 15 January 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President