



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

FOURTH SECTION

CASE OF VELCHEVA v. BULGARIA

(Application no. 35355/08)

JUDGMENT
(Merits)

STRASBOURG

9 June 2015

FINAL

09/09/2015

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

In the case of Velcheva v. Bulgaria,

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

Guido Raimondi, *President*,

George Nicolaou,

Ledi Bianku,

Nona Tsotsoria,

Paul Mahoney,

Krzysztof Wojtyczek,

Yonko Grozev, *judges*,

and Françoise Elens-Passos, *Section Registrar*,

Having deliberated in private on 19 May 2015,

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

PROCEDURE

1. The case originated in an application (no. 35355/08) 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 Gana Petkova Velcheva (“the applicant”), on 30 June 2008.

2. The applicant was represented by Mr M. Ekimdzhiev and Ms G. Chernicherska, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agent, Ms Y. Stoyanova, of the Ministry of Justice.

3. The applicant alleged that the authorities had failed to comply with a final court judgment allowing her claim for restitution of agricultural land.

4. On 7 May 2013 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1927 and lives in the village of Ribaritsa.

6. Her father, of whom she is the sole heir, owned agricultural land in the area surrounding the village which was incorporated into an agricultural cooperative at the beginning of the 1950s.

7. In 1991, following the adoption of the Agricultural Land Act (“the ALA”, see paragraph 17 below), the applicant applied for the land’s restitution.

8. By a decision dated 10 March 1999 the land commission dealing with the case refused to restore her rights to two plots of 900 and 2,000 square metres respectively, noting that sheep pens had been built on them by the agricultural cooperative. It held that the applicant was entitled to compensation in lieu of restitution.

9. The above decision was served on the applicant in 2004, whereupon she applied for a judicial review.

10. In a judgment of 8 September 2005 the Teteven District Court quashed the decision of 10 March 1999, finding, on the basis of an expert report, that there were no buildings on the plots at issue, only assorted construction materials. Accordingly, there was no obstacle to the plots’ restitution in kind. In addition, the Agriculture and Forestry Department – the successor body of the land commission – had argued in the proceedings that the land had been sold by the agricultural cooperative to a third party. According to the District Court, this circumstance, apart from being unsubstantiated, could not bar restitution in kind either, because any dispute as to the land’s ownership would fall to be examined by the civil courts after completion of the restitution procedure.

11. On the basis of the above, the District Court held that the applicant was entitled to the restitution in kind of the two plots of land.

12. No appeal was lodged against the above judgment and it entered into force on 26 September 2005.

13. On 20 February 2006 the Agriculture and Forestry Department took another decision on the same matter, refusing the restitution in kind of two plots of land, one of 2,127 square metres and the other of 454 square metres, apparently identical to the plots discussed above. The Department noted that in 1995 the two plots had been sold by the agricultural cooperative to a third party, and that an agricultural building and a metal shelter had been erected on the plot of 2,127 square metres. It held once again that the applicant was entitled to compensation in lieu of restitution.

14. The applicant applied for a judicial review of that decision. In a final judgment of 4 October 2006 the Lovech Regional Court found the decision null and void since it contradicted the judgment of 8 September 2005.

15. The applicant submits that following the Lovech Regional Court’s judgment she paid numerous visits to the Agriculture and Forestry Department to request compliance with the judgment of 8 September 2005. In July 2007 she wrote to the Department’s superior body, the Lovech Regional Directorate of Agriculture and Forests, requesting its intervention.

16. In 18 October 2006 the Agriculture and Forestry Department adopted a new decision on the matter. Noting that the applicant’s right to restitution had been recognised by virtue of the judgments of 8 September

2005 and 4 October 2006, it restored her rights to three plots, measuring 2,127, 319 and 454 square metres respectively, which were apparently identical to the plots discussed above. The decision identified the plots measuring 2,127 and 454 square metres with their borders and specifications under the cadastral plan, but not the plot of 319 square metres. The decision, a copy of which was submitted by the Government, bears no mention of having been received by the applicant.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The Agricultural Land Act (*Закон за собствеността и ползването на земеделските земи*) was adopted in 1991. Its relevant provisions concerning the restitution of agricultural land to its former owners have been summarised in the Court's judgments in the cases of *Lyubomir Popov v. Bulgaria* (no. 69855/01, §§ 83-87 and 92, 7 January 2010) and *Sivova and Koleva v. Bulgaria* (no. 30383/03, §§ 29-44, 15 November 2011).

18. In particular, section 14(1) of the ALA provides that a decision of the Agriculture Department (as the Agriculture and Forestry Departments were referred to after 2008) ordering restitution, accompanied by a plan of the respective plot, serves as valid title to property equivalent to a notarial deed. Where no such plan has been issued, the domestic courts have systematically accepted that the restitution procedure has not been finalised and that the interested parties therefore cannot seek judicial protection of their property rights (see for example *Решение № 1161 от 14.11.2008 г. на БКС по гр. д. № 4952/2007 г., II г. о.*, and *Определение № 466 от 17.10.2008 г. на БКС по ч. гр. д. № 1187/2008 г., I г. о.*, submitted by the applicant; also *Решение № 248 от 27.07.2010 г. на БКС по гр. д. № 58/2009 г., II г. о.*). Such judicial protection can be sought in situations where third parties claim to be the owners of restituted land on a legal basis other than restitution (see, for more details on such situations, *Sivova and Koleva*, cited above, § 44).

19. On the other hand, section 14(4) of the ALA provides that “any dispute concerning substantive rights is to be resolved by the courts”. This procedure is to be resorted to where there are competing claims as to who was the owner of a given plot prior to the collectivisation, and thus who is entitled to restitution (see *Тълкувателно решение № 1 по гр. д. № 11/1997 г. на БКС, ОСГК*, and *Решение № 9 от 11.04.2009 г. на БКС по гр. д. № 6026/2007 г., I г. о.*). This provision can be resorted to even where the restitution procedure concerning some of the claimants has not been completed.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL No. 1

20. The applicant, relying on Article 1 of Protocol No. 1 and Articles 6 § 1 and 13 of the Convention, complained that the Agriculture and Forestry Department had failed to comply with the Teteven District Court's judgment of 8 September 2005 and to complete the restitution process. She considered in addition that the restitution procedure had been too protracted.

21. The Court is of the view that the complaints at issue are most appropriately examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 which, in so far as relevant, read as follows:

Article 6 § 1

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

Article 1 of Protocol No. 1

“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. Arguments of the parties

1. The Government

22. Referring to the Agriculture and Forestry Department's decision of 18 October 2006 (see paragraph 16 above) – of which the Court was not aware prior to communication of the present application – the Government argued that the applicant, in concealing its existence, had abused her right of individual application. On these grounds, the Government urged the Court to declare the application inadmissible.

23. On the merits, the Government argued that there had been no breach of the applicant's rights, because the judgment of 8 September 2005 had been enforced with the adoption of the decision of 18 October 2006. They contended that after this decision, and since the land claimed by the applicant had been transferred to a third party in 1995, it was up to the applicant to bring proceedings against that third party to defend her property rights.

2. *The applicant*

24. The applicant disagreed. She stated that she had never been notified of the decision of 18 October 2006, despite having visited the Agriculture and Forestry Department on numerous occasions, and had only learned of it after the Government had submitted it to the Court. She pointed out that the decision bore no mention that it had been received by her.

25. Moreover, the applicant pointed out that the decision at issue was not in itself enough to complete the restitution procedure since the specifications of one of the restituted plots had been omitted. Moreover, it had not been accompanied by the requisite plans of the three restituted plots, and could thus not give rise to a valid title to property.

26. The applicant submitted a written statement from her son, in which he explained that when – acting as her representative – he had visited the Agriculture Department in October 2013, requesting plans of the plots in question, he had been told that no plans would be issued because “the land had not been restituted”.

27. Accordingly, the applicant concluded that the restitution procedure had still not been completed and that the judgment of 8 September 2005 had not been enforced.

28. She pointed out that in such a case she could not have brought an action against the third party to whom the land had been transferred in 1995. In this regard she relied on some of the domestic decisions referred to in paragraph 18 above.

29. The applicant reiterated that the judgment of 8 September 2005 had given rise to a right to restitution which had not been realised due to the authorities’ unwillingness to take the necessary action. Referring to a number of cases decided by the Court, such as *Mutishev and Others v. Bulgaria* (no. 18967/03, 3 December 2009), *Mancheva v. Bulgaria* (no. 39609/98, 30 September 2004), and *Ryabykh v. Russia* (no. 52854/99, ECHR 2003-IX), the applicant pointed out that the principle of legal certainty required compliance with final court judgments.

30. Lastly, the applicant reiterated her argument that the restitution procedure had been excessively delayed by the authorities.

3. *The Government’s additional observations*

31. In their submissions in response to those of the applicant, the Government acknowledged that the restitution procedure had not been completed because the Agriculture Department had not issued the plans of the plots at issue. However, the Government considered the issuance of such plans impossible prior to resolution of the property dispute between the applicant and the third party to whom the land had been transferred in 1995. The Government were of the view that the applicant should have resorted to the procedure provided for in section 14(4) of the ALA (see paragraph 19

above), and pointed out that the procedure could be initiated even where the restitution procedure had not been finalised.

B. The Court's assessment

1. Admissibility

(a) Abuse of the right of individual application

32. The Court takes note of the Government's allegation (see paragraph 22 above) that the applicant had abused her right of individual application by deliberately misleading the Court, because she had not informed it of the Agriculture and Forestry Department's decision of 18 October 2006.

33. The Court remarks that, prior to communication of the present application to the Government, it had been unaware of the decision at issue. It notes also that under Article 35(3)(a) of the Convention it may reject an application as constituting an abuse, and that this would be so, for example, in cases where the application was knowingly based on untrue facts (see, among other authorities, *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; and *Kerechashvili v. Georgia* (dec.), no. 5667/02, 2 May 2006).

34. However, in the present case the Court cannot conclude with certainty that the applicant was aware of the decision at issue before communication of the present application to the Government. It takes note of her statement that she had not been informed about it (see paragraph 24 above), and the fact that the decision itself bears no mention of its having been served on her (see paragraph 16 above). In addition, the Court observes that even in 2007 the applicant continued insisting before the competent State bodies that they should enforce the court judgment of 8 September 2005 (see paragraph 15 above). Accordingly, the Court cannot conclude that the applicant knowingly misled it and based her application on untrue facts, and will not reject the present application on the grounds of abuse of the right of individual application.

(b) Conclusion as to the admissibility

35. The Court notes in addition that the application 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

36. The Court notes at the outset that even though the Teteven District Court stated in its judgment of 8 September 2005 that the applicant was

entitled to the restitution in kind of the plots of land claimed by her (see paragraph 11 above), further action was needed on the part of the Agriculture and Forestry Department so that the judgment could become fully operative, since only a decision of the Department accompanied by a plan of the respective plot could validly complete the restitution procedure (see paragraph 18 above). Accordingly, even though the judgment at issue did not directly order the Department to take certain action, the latter was still obliged to take measures so that the judgment could be enforced.

37. The Government did not dispute this, but argued initially that the judgment had been properly enforced with the adoption by the Agriculture and Forestry Department of the decision of 18 October 2006 (see paragraph 23 above). Eventually they conceded (see paragraph 31 above) that the restitution procedure had not been completed because the applicant had not been provided with plans of the plots allocated to her. The Court, for its part, notes in addition that even in the decision of 18 October 2006, one of the plots allocated to the applicant was not fully described with the necessary specifications (see paragraph 16 above). Accordingly, the Court concludes that despite the decision of 18 October 2006 the judgment of 8 September 2005 has not yet been enforced by the authorities.

38. It reiterates that the right to a court protected by Article 6 would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision such as the one in the present case to remain inoperative to the detriment of one party. Execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6. An unreasonably long delay in enforcing a binding judgment may therefore breach the Convention (see *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II, and *Burdov v. Russia* (no. 2), no. 33509/04, §§ 65-66, ECHR 2009).

39. In addition, the Court has held that the prolonged non-enforcement of a final court judgment giving rise to a "legitimate expectation" – and thus to a "possession" within the meaning of Article 1 of Protocol No. 1 – can be seen as problematic under that provision (see *Ramadhi and Others v. Albania*, no. 38222/02, §§ 76-77, 13 November 2007, and *Mutishev and Others*, cited above, § 125). Lastly, it has held that the compliance with the principle of legal certainty that is inherent in Article 1 of Protocol No. 1 requires that, where the courts have finally determined an issue, their ruling should not be called into question, save for reasons of a substantial and compelling nature (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII).

40. Turning to the present case, the Court observes that initially the Agriculture and Forestry Department refused to comply with the judgment of 8 September 2005, issuing a decision which contradicted it (see paragraph 13 above). In the Lovech Regional Court's judgment of 4 October 2006 (see paragraph 14 above) its refusal was found to be

unlawful under domestic law. The Court sees no reason not to conclude that the refusal was also contrary to the requirements of the Convention set out above, since it was not permissible for the Department, a State body, to call into question the findings of a final court judgment (see also *Hadzhigeorgievi v. Bulgaria*, no. 41064/05, § 68, 16 July 2013).

41. After 4 October 2006 the authorities did not explicitly contest the applicant's right to restitution recognised in the judgment of 8 September 2005, but they failed to take the measures necessary to comply with the judgment in an effective and meaningful manner. In particular, the Agriculture and Forestry Department adopted its decision of 18 October 2006, restoring the applicant's rights to the land claimed by her, but the decision lacked essential elements such as the specification of one of the plots and even now, many years later, needs to be supplemented by the requisite plans.

42. The Government sought to justify this situation by citing the fact that the applicant had failed to bring an action under section 14(4) of the ALA against the party who had bought the land in 1995 (see paragraph 31 above).

43. For the Court, this circumstance cannot serve as justification for the refusal to enforce the judgment at issue. It notes firstly that, although an action under section 14(4) can be brought even where the restitution procedure has not been completed (see paragraph 19 above), it has not been argued that such an action must in all circumstances be brought at that stage, or that the existence of a "dispute concerning substantive rights" constitutes a bar to completion of the restitution procedure.

44. Moreover, it appears that such a procedure – which is relevant in situations where different parties have competing restitution claims, each of them arguing that it was their ancestor who owned the land at issue before the collectivisation (see *ibid.*) – is not applicable in the applicant's case. In her case no one disputed that her father had owned the land at an earlier stage, but as the land had been sold to a third party in 1995, it was possible that that party would challenge the applicant with its own property claims, which would be based on the purchase of that land. However, such claims would have to be examined in civil proceedings, initiated for instance on the basis of a *rei vindicatio* action, and not in proceedings under section 14(4) of the ALA. The Court has examined numerous restitution cases against Bulgaria in which the rights of applicants in possession of positive restitution decisions have been disputed by third parties with rival claims to the same land which were based, as in the present case, on a purchase or some other transaction, and in these cases the matter was normally resolved by means of a *rei vindicatio* action (see for example *Sivova and Koleva*, cited above; *Nedelcheva and Others v. Bulgaria*, no. 5516/05, 28 May 2013; and *Ilieva and Others v. Bulgaria*, no. 17705/05, 3 February 2015). The Court does not consider that, should the applicant in the present case seek to pursue a *rei vindicatio* action against the third party who bought the land

claimed by her, she could do that without having first obtained valid title to the property, that is to say without the restitution procedure having been supplemented with the issuance of plans of the plots and any other necessary formalities. In that regard the Court refers to the domestic decisions illustrating that the courts will not allow a property claim by a person in the applicant's position without a plan of the plots concerned (see paragraph 18 above).

45. On the basis of the above, the Court concludes that the authorities' continued failure to enforce effectively the judgment of 8 September 2005 cannot be justified by the fact that the applicant failed to bring proceedings against the third party to whom the land was transferred in 1995.

46. The Government have not cited any other reason justifying the prolonged failure to enforce the judgment of 8 September 2005. The Court also observes that, as noted by the Teteven District Court in the judgment of 8 September 2005 (see paragraph 10 above), the fact that the land claimed by the applicant had been transferred to a third party was not in itself a bar to the completion of the restitution procedure, because, as domestic law operates and as in fact happened, for example, in the cases referred to in paragraph 44 above, any dispute between that party and the applicant would fall to be examined at a later stage and, in the context of the present application, it is not for the Court to speculate on the outcome of such future proceedings.

47. In view of the foregoing, the Court concludes that the prolonged failure to enforce the Teteven District Court's judgment of 8 September 2005 was unjustified. The authorities thus failed to respect the applicant's right to a court.

48. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

49. Since the judgment at issue gave rise to a "legitimate expectation" of restitution for the applicant – which is to be considered as constituting a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Mutishev and Others*, §§ 120-24, and *Hadzhigeorgievi*, §§ 61-63, both cited above) – the authorities' prolonged failure to comply with that judgment also violated the applicant's right to the peaceful enjoyment of her possessions.

50. There was accordingly also a breach of Article 1 of Protocol No. 1.

51. In view of the latter conclusion, the Court does not find it necessary to examine separately the second aspect of the applicant's complaint, namely that the restitution procedure was too protracted (see paragraph 20 above), as it notes that the delays to be taken into account were those related to the implementation of the judgment of 8 September 2005. The Court cannot take into account under Article 1 of Protocol No. 1 the period preceding that date because – as it found in paragraph 49 above – the

applicant's "legitimate expectation" to restitution triggering that provision's protection arose only with the judgment of 8 September 2005.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant stated that in respect of pecuniary damage she wished to receive only the plots of land claimed by her in the domestic restitution procedure. She considered that this would place her in circumstances most closely resembling those which would have existed had her rights under the Convention not been breached. She argued that there was no obstacle to the finalisation of the restitution procedure.

54. In respect of non-pecuniary damage, the applicant claimed 10,000 euros (EUR).

55. The Government contested the claims.

56. The Court observes that a judgment in which it 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. Thus, if the nature of the breach allows *restitutio in integrum*, it is for the respondent State to effect it (see *Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B; and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, §§ 19-20, ECHR 2001-I).

57. In view of the above, the Court is of the view that in the instant case the most appropriate reparation would be compliance with the Teteven District Court's judgment of 8 September 2005, namely completion of the restitution procedure with the issuance of the plans of the plots allocated to the applicant and compliance with any other necessary formalities. This would put the applicant in circumstances that are as far as possible equivalent to those in which she would have found herself had there not been a breach of the Convention (see *Mutishev and Others v. Bulgaria* (just satisfaction), no. 18967/03, § 29, 28 February 2012. As already discussed above, the applicant's actual entitlement to restitution in kind would remain to be determined at a subsequent stage, as provided for by national law.

58. Given the above, the Court considers that the question of the application of Article 41, in so far as it concerns pecuniary and non-pecuniary damage, is not ready for decision (Rule 75 § 1 of the Rules

of Court). Accordingly, the Court reserves that question and the further procedure and invites the Government and the applicant, within four months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, to submit their observations on the matter and in particular to inform it of any agreement that they may reach, bearing in mind the considerations set forth in the previous paragraphs.

B. Costs and expenses

59. The applicant also claimed EUR 4,032.25 for the legal work performed by her representatives before the Court. In support of this claim she submitted a time sheet. She also claimed EUR 178.82 for translation, submitting the respective contract concluded between her representatives and a translator. Lastly, the applicant claimed EUR 63 for telephone fees, copying and other expenses. She requested that any amount awarded under the present head be transferred directly into the bank account of her representatives.

60. The Government argued that the amount claimed for legal representation was excessive.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award EUR 2,500 covering costs under all heads. As requested by the applicant, that sum is to be transferred directly into the bank account of her legal representatives.

C. Default interest

62. 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 6 § 1 of the Convention;
3. *Holds* that there has also been a violation of Article 1 of Protocol No. 1;

4. *Holds* that the question of the application of Article 41, insofar as it concerns the applicant's claims for pecuniary and non-pecuniary damage, is not ready for decision;
accordingly,
(a) reserves the said question;
(b) invites the Government and the applicant to submit, within four months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and 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;
5. *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, EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into Bulgarian leva at the rate applicable at the date of settlement, and 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
6. *Dismisses* the remainder of the applicant's claim for costs and expenses.

Done in English, and notified in writing on 9 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Françoise Elens-Passos
Registrar

Guido Raimondi
President