



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

FIFTH SECTION

CASE OF ANTONOV v. BULGARIA

(Application no. 58364/10)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Requests for tax refund granted by final judgments stayed for years pending nullity proceedings lodged by authorities despite any prospect of success • Additional background of several years of tax-enforcement proceedings ending up in auctioning of applicant's belongings • Applicant dragged into or forced to bring multiple proceedings • Fair balance upset

STRASBOURG

28 May 2020

FINAL

28/08/2020

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

In the case of Antonov v. Bulgaria,

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

Síofra O’Leary, *President*,
Gabriele Kucsko-Stadlmayer,
Ganna Yudkivska,
André Potocki,
Yonko Grozev,
Lətif Hüseyinov,
Anja Seibert-Fohr, *judges*,

and Victor Soloveytschik, *Deputy Section Registrar*,

Having deliberated in private on 28 April 2020,

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

PROCEDURE

1. The case originated in an application (no. 58364/10) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Bulgarian national, Mr Yordan Dimitrov Antonov (“the applicant”), on 29 September 2010.

2. The applicant was represented by Mr M. Ekimdzhev and Ms G. Chernicherska, lawyers practising in Plovdiv. The Bulgarian Government (“the Government”) were represented by their Agents, Ms K. Radkova and Ms M. Dimova, of the Ministry of Justice.

3. The applicant complained that the failure of the tax authorities for several years to pay him back unduly collected taxes, as established in two final judgments in his favour, had breached his right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1. He further complained that he had not had an effective remedy under Article 13 in respect of the alleged violation of Article 1 of Protocol No.1.

4. On 13 September 2017 the Government were given notice of the complaints under Article 13 and Article 1 of Protocol No. 1 to the Convention and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1940 and lives in the village of Okorsh, Silistra region.

A. The 2001 tax assessments and the ensuing judicial review proceedings

6. In 2000-01 the tax authorities conducted a tax audit of the applicant, who at that time was the legal representative of a private agricultural association. The audit was carried out in respect of income tax and value-added tax (“VAT”) for the periods between January 1998 and December 1998 and between February 1998 and August 1999 respectively.

7. On 2 March 2001 the Silistra territorial tax directorate issued a tax assessment (*данъчен ревизионен акт*) charging the applicant a total amount of 55,013.43 Bulgarian leva ((BGN); 28,128 euros (EUR)) in VAT and income tax, including interest.

8. Noting a mistake in the applicant’s tax registration, on 30 March 2001 the tax authorities issued an act for correction of an obvious factual error in the tax assessment of 2 March 2001 (*акт за поправка на данъчен ревизионен акт*). The taxes imposed on the applicant were not reviewed and remained unchanged.

9. The applicant challenged the taxes before the director of the Varna regional tax office, who on 1 June 2001 upheld the 2001 tax assessments. The applicant then sought judicial review, but on 16 December 2002 the Supreme Administrative Court (“the SAC”) discontinued the proceedings, noting that his appeal had been submitted outside the statutory time-limits for judicial review and had thus become time-barred.

10. On 11 April 2003, citing a breach of the tax legislation and on the basis of Article 115 of the Code of Tax Procedure 1999 (“the 1999 Code”; see paragraph 31 below), the applicant asked the director of the Varna regional tax office to set aside the 2001 tax assessments and to carry out a new tax audit. On 18 April 2003 the director refused that request. The applicant sought judicial review. In a final decision of 10 January 2004 the Varna Regional Court quashed the director’s refusal and instructed the tax authorities to carry out a fresh tax audit. The court found that the authorities had performed the 2001 audit of the applicant as an individual, but had charged him taxes in relation to the association’s activity. In the court’s view, the taxes imposed on the applicant under the 2001 tax assessments had thus been in breach of the statutory provisions.

B. The 2004 tax assessment and the ensuing judicial review proceedings

11. After carrying out a new tax audit for the same period as that covered by the 2001 tax assessment (see paragraph 6 above), the tax authorities issued a fresh tax assessment on 18 May 2004, charging the applicant a total of BGN 40,729.81 (EUR 20,825) in VAT and income tax, including interest. The applicant brought judicial review proceedings against the new tax assessment. On 28 August 2006 the Varna Administrative Court quashed the 2004 tax assessment. On 29 October 2007

the SAC upheld that judgment. The courts found that the taxes charged to the applicant had not been due since the activity subjected to taxation had been carried out by the agricultural association and not by the applicant as an individual.

C. Proceedings for tax refund and the ensuing judicial review proceedings

12. On unspecified dates in 2002 and 2004 the authorities instituted enforcement proceedings against the applicant, apparently on the basis of the 2001 and 2004 tax assessments, which under domestic law were directly enforceable (see paragraph 30 below). It appears that between 2003 and 2008, by auctioning a number of his personal belongings, they collected a total of BGN 42,386.71 (EUR 21,672).

13. On 5 and 30 November 2007 the applicant submitted two requests for a tax refund in connection with the 2001 and 2004 tax assessments. In decisions of 27 November 2007 (*акт за прихващане или възстановяване*) and 13 December 2007 (*акт за прихващане или възстановяване*) respectively the tax authorities refused to refund the sums paid by him under the 2001 and 2004 tax assessments. In their opinion, even though the courts had set aside the 2004 tax assessment, the 2001 tax assessment had remained in force. Therefore, the taxes imposed on the applicant had been collected correctly.

14. The applicant sought judicial review of the two decisions in two separate sets of proceedings.

15. In the first set of proceedings, on 28 November 2008, the SAC found that the taxes charged under the 2001 assessment had been unduly paid. The court noted that the 2001 tax assessment had been replaced by the 2004 assessment, which had been set aside by the courts on 29 October 2007 (see paragraph 10 above). It further observed that the new tax audit of the applicant had been carried out in May 2004, after the Varna Regional Court had found in January 2004 that the taxes imposed by the 2001 tax assessment had been charged in breach of the statutory rules. The SAC went on to say that even though the applicant had not sought judicial review, the subsequent tax audit resulting in the 2004 tax assessment had in fact revoked the 2001 decision. The 2004 tax assessment which charged the applicant with the same type of taxes, on the same legal grounds and for the same period as the 2001 decision had been set aside because the courts had found that the taxes had not been due by the taxpayer (see paragraph 11 above). Accordingly, the sums paid by the applicant under both the 2001 and the 2004 tax assessments had to be returned to him. The SAC thus quashed the decision of 13 December 2007 refusing to return to the applicant the sums collected under the 2001 tax assessment. The court then referred the case file back to the tax authorities, instructing them to apply

the procedure for offset or refund of undue taxes set out in the Tax and Social Security Code of Procedure 2006 (“the TSSCP”).

16. In the second set of proceedings, on 15 December 2008, the SAC also set aside the tax authorities’ decision of 27 November 2007 refusing reimbursement of the amounts collected under the 2004 tax assessment. It noted that the quashing of the 2004 tax assessment by the courts had affected also the 2001 tax assessment. The court likewise found that the sums paid out by the applicant under both the 2001 and 2004 tax assessments had not been due and that they therefore had to be returned to him, along with the statutory interest.

D. The applicant’s attempts to obtain enforcement of the final judgments of 28 November 2008 and 15 December 2008

17. Referring to the SAC’s final judgments of 28 November 2008 and 15 December 2008 and Articles 128 et seq. of the TSSCP (see paragraphs 33-35 below), the applicant asked the tax authorities to reimburse the amounts paid under the 2001 and 2004 tax assessments. On 13 January 2009 and 10 February 2009 respectively, he was informed that the administrative proceedings had been stayed pending the outcome of unspecified court proceedings.

18. Meanwhile, on 8 January 2009, the tax authorities brought proceedings before the SAC seeking a judicial declaration that the final judgment of 28 November 2008 (see paragraph 15 above) was null and void for breach of the substantive and procedural rules. They argued, in particular, that the courts’ conclusions that the 2001 tax assessment had been replaced by the 2004 tax assessment had been wrong and in breach of the statutory provisions. The tax authorities further maintained that the 2001 tax assessment remained valid since the applicant had failed to lodge a timely appeal against it (see paragraph 9 above). The fact that the 2004 tax assessment concerned the same period and charged the same taxes to the applicant had not been relevant. In their opinion, the judgment of 28 November 2008 was therefore null and void since the SAC had in fact set aside a valid tax assessment which had not been the subject matter of the dispute.

19. The tax authorities’ claim was later coupled with a request for reopening of the proceedings. On 9 January 2009 the SAC found that it had no competence to deal with the claim of nullity in respect of the court judgment, which should be examined by the Varna District Court under the procedure provided for in Article 270 (2) of the Code of Civil Procedure (see paragraph 38 below).

20. Several months later, on 13 July 2010, the SAC also dismissed a request by the tax authorities for reopening of the proceedings, noting that the legal prerequisites for that had not been met.

21. Meanwhile, the claim of nullity brought by the tax authorities (see paragraph 18 above) was examined by the Varna District Court. On several occasions that court discontinued the proceedings after the tax authorities had failed to comply with its instructions to pay the statutory court fees. The proceedings ultimately ended on 14 March 2012 when the Varna District Court dismissed the tax authorities' claim. The court checked for the presence of any of the possible grounds for nullity of judicial decisions and noted in that regard that the SAC's judgment of 28 November 2008 had been given by a three-judge panel within the SAC's jurisdictional competence; it had been delivered in writing and had been signed by the judicial panel; its reasons as well as the judgment's operative part indicated clearly the court's will. The Varna District Court's concluded that the arguments relied upon by the tax authorities were ill-founded since they could not entail the nullity of the SAC's final judgment of 28 November 2008. The ruling of 14 March 2002 was not appealed against and entered into force on 10 April 2012.

22. On an unspecified date in 2009 the tax authorities also brought proceedings in the SAC seeking a judicial declaration that the final judgment of 15 December 2008 (see paragraph 16 above) was likewise null and void. On 23 March 2009 a five-member panel of the SAC discontinued the proceedings, finding the authorities' request inadmissible. The SAC noted that in the proceedings which resulted in the final judgment of 15 December 2008 the court had examined the case on the merits. It went on to say that judicial proceedings in administrative cases were in principle examined at two levels of court and that, having regard to the fact that the tax authorities claimed nullity on grounds that were only relevant for appeals on points of law, the request was inadmissible.

23. On an unspecified date in July 2009 the applicant brought proceedings in the Varna Administrative Court requesting the court to impose a financial sanction on the director of the Varna tax office under Article 304 of the Code of Administrative Procedure 2006 for failure to comply with a final court judgment (see paragraph 37 below). The outcome of those proceedings is not known.

E. Proceedings under the State and Municipalities Responsibility for Damage Act

24. In March 2009 the applicant brought a claim for compensation against the tax authorities under section 1(1) of the State and Municipalities Responsibility for Damage Act 1988 ("the 1988 Act"). He argued that he had suffered damage as a result of the authorities' failure to comply with the SAC's final judgments of 2008 (see paragraphs 15-16 above) and to refund him the money collected under the 2001 and 2004 tax assessments, which had been set aside by the courts.

25. On 29 May 2009 the Silistra Administrative Court decided to split the proceedings into four different sets of proceedings. That court noted that the applicant had in fact sought damages in relation to four separate decisions, namely the 2001 and 2004 tax assessments and the ensuing decisions of the tax authorities of 27 November 2007 and 13 December 2007 refusing his requests for a refund (see paragraph 13 above).

26. In final judgments delivered respectively on 28 June 2010, 12 July 2010, 4 October 2010 and 22 November 2010, the SAC dismissed all four claims. It noted that since Articles 128 et seq. of the TSSCP provided for a special procedure for offset and refund of undue taxes (see paragraphs 33-35 below), the 1988 Act was not applicable.

F. Refund of the taxes unduly collected from the applicant

27. From the documents in the case file it transpires that on several occasions between August 2010 and May 2012 the applicant requested the tax authorities to pay him back the sums unduly collected from him under the 2001 and 2004 tax assessments.

28. On 30 May 2012 the tax authorities issued a decision for offset and refund, ordering that the applicant be refunded BGN 42,286.71 (EUR 21,621). The money was transferred in two instalments of 7 and 8 June 2012 respectively.

29. On 2 July 2012 they also paid the applicant BGN 40,460.92 (EUR 20,687) in statutory interest for late payment in respect of the period between 3 May 2001 and 8 June 2012.

II. RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Tax assessments and tax refund proceedings

30. The 1999 Code (see paragraph 10 above), as worded until 1 January 2006, provided that an obligation established by virtue of a tax assessment was to be paid by the taxpayer of his or her own accord within fourteen days. After the expiry of that term, the tax assessment became enforceable irrespective of any subsequent judicial review proceedings brought by the taxpayer, unless its execution has been stayed by the tax authorities or the court (Article 110 of the 1999 Code). The tax assessment could be appealed against within fourteen days to the higher-ranking revenue authority, namely the director of the relevant regional tax directorate. The director's decision was in turn amenable to judicial review at two levels of jurisdiction (Article 117 and Article 121 of the 1999 Code).

31. A tax assessment which had become final could be revised at the request of the taxpayer or on the tax authorities' own initiative (Article 115 (1)) on the grounds, *inter alia*, that the tax obligation had been imposed in breach of the statutory provisions (Article 115 (2),

sub-paragraph 4, of the 1999 Code). The person concerned had to submit his or her request for review along with the supporting documents to the director of the relevant regional tax directorate, who had thirty days in which to refuse or order a new tax audit. The director's decision or tacit refusal could be challenged before the competent regional court, whose decision was final (Article 116 of the 1999 Code).

32. On 1 January 2006 the 1999 Code was superseded by the TSSCP (see paragraph 15 above). Articles 129-132 of the TSSCP provide that the procedure for offset and refund of unduly paid or collected taxes may be instituted at the request of the taxpayer or on the initiative of the tax authorities. The latter may carry out an audit or an inspection.

33. On submission of a final court judgment or a final administrative decision recognising a taxpayer's right to be reimbursed, the tax authorities must offset or refund within thirty days any sums that have been erroneously or unduly paid or collected in taxes, including interest (Article 129 (5), sub-paragraph 1, of the TSSCP), as well as any amounts the reimbursement of which has been unlawfully refused (Article 129 (5), sub-paragraph 2, of the TSSCP).

34. Any unduly paid or collected sums, with the exception of compulsory social-security contributions, must be refunded along with statutory interest for late payment (Article 129 (6) of the TSSCP).

35. The tax authorities' decisions to offset or refund tax, or their refusals to do so, including tacit refusals, are amenable to review under the same procedure as tax assessments (Article 129 (7) of the TSSCP). The appeal must first be lodged with the higher-ranking revenue authority, whose decision is then subject to judicial review at two levels of jurisdiction.

B. Enforcement of final administrative court judgments

36. The relevant provisions governing the enforcement of final administrative court judgments under the Code of Administrative Procedure 2006 ("the 2006 Code") have been summarised in detail in *Stoyanov and Tabakov v. Bulgaria*, no. 34130/04, §§ 53-59, 26 November 2013, and *Dimitar Yanakiev v. Bulgaria (no. 2)*, no. 50346/07, §§ 30-35, 31 March 2016. In particular, Article 177 (1) of the 2006 Code stipulates that judgments by the SAC setting aside an administrative decision or declaring it null and void are binding on everyone.

37. Article 304 of the 2006 Code provides that in cases which do not concern the enforcement of administrative or judicial decisions under Chapter V of the 2006 Code, an official who fails to fulfil an obligation arising from an enforceable judicial decision will be fined between BGN 200 and BGN 2,000 (EUR 102 and 1,022). In the event of repeated failure to act, the official is fined BGN 500 for every week of non-enforcement, unless action on his or her part is objectively impossible.

The fine is imposed by the president of the administrative court and is subject to appeal before a three-member panel of the same court, whose ruling is final (Article 306).

C. Nullity of a court judgment

38. Under the settled case-law of the domestic courts a court judgment is considered null and void if (i) it has been delivered by an unlawfully constituted panel of judges; (ii) it goes beyond the jurisdiction of the court; (iii) the ruling is not given in writing or is not signed; (iv) the court's will cannot be inferred owing to the absolute incomprehensibility of the judgment. Failure to give reasons does not entail the nullity of the judgment (see *пеш. № 668 от 15.11.2010 г. на БКС по гр. д. № 1790/2009 г., I г.о, пеш. № 248 от 11.06.2012 г. на БКС по гр. д. № 572/2011 г., IV г.о*).

39. The nullity of a court judgment may be sought by lodging a request for a judicial declaration that the judgment is null and void or by way of an objection. The request is not subject to any time-limit (Article 270 (2) of the Code of Civil Procedure 2007).

D. State liability for damage

40. The relevant provisions governing State liability for unlawful acts and omissions under the State and Municipalities Responsibility for Damage Act 1988 ("the 1988 Act") have been summarised in *Dimitar Yanakiev*, cited above, §§ 36-37. In particular, persons seeking redress for damage occasioned in circumstances falling within the scope of the 1988 Act have no claim under the general law of tort, as the 1988 Act is a *lex specialis* and excludes the application of the general regime (*пеш. № 1370/1992 г. от 16.12.1992 г. по гр.д. № 1181/1992 г. на ВС, IV г.о.; пеш. от 29.07.2002 г. по гр.д. № 169/2002 г. на СГС, ГК, IVб отд.*). However, where a law provides for a different avenue of redress, the 1988 Act does not apply (section 8(2) as worded before December 2012).

E. The statutory rate of interest

41. The relevant provisions governing the statutory rate of interest were set out in *Zaharieva v. Bulgaria* ((dec.), no. 6194/06, § 42, 20 November 2012).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 13 AND 1 OF PROTOCOL NO.1 TO THE CONVENTION

42. The applicant complained that the tax authorities' failure for several years to refund him unduly paid taxes, as established by the SAC's final judgments in his favour, had breached his right to peaceful enjoyment of his possessions under Article 1 of Protocol No. 1 to the Convention. Relying on Article 13, he also complained that he had not had an effective remedy in respect of the alleged violation of Article 1 of Protocol No. 1.

43. Article 13 and Article 1 of Protocol No.1 to the Convention read respectively as follows:

Article 13

"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."

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. Admissibility

1. The Government

44. The Government raised two objections with respect to the admissibility of the application. Firstly, in their view, the applicant had lost his victim status as a result of the repayment by the tax authorities in 2012 of the amounts unduly collected from him, including interest. Secondly, they submitted that by failing to inform the Court about the refund, which was made after he had lodged his application with the Court, the applicant and his legal representative had failed to comply with their obligation to inform the Court of any relevant developments in the case. This, in the Government's opinion, was incompatible with the purpose of the right of individual petition.

2. *The applicant*

45. The applicant contested the above arguments. He submitted that before refunding the sums due the authorities had instituted enforcement proceedings against him, resulting in a number of his assets being sold at public auctions. He also pointed out that the authorities had used various procedural manoeuvres to delay the repayment. In his opinion, the fact that they had delayed for almost four years compliance with the SAC's final judgments was sufficient for him to maintain his victim status.

46. The applicant did not comment on the alleged abuse of the right of petition.

3. *The Court's assessment*

(a) **The applicant's victim status**

47. The Court reiterates that it falls first to the national authorities to redress any alleged violation of the Convention. In this regard, the question whether an applicant can claim to be a victim of the violation alleged is relevant at all stages of the proceedings under the Convention (see *Burdov v. Russia*, no. 59498/00, § 30, ECHR 2002-III). A decision or measure favourable to the applicant is not in principle sufficient to deprive him or her of "victim" status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Eckle v. Germany*, 15 July 1982, §§ 69 et seq., Series A no. 51; *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III; *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Jensen v. Denmark* (dec.), no. 48470/99, ECHR 2001-X).

48. Turning to the facts of the present case, it is true that the applicant was refunded the unduly collected taxes, including interest. However, the payment, while putting an end to the situation complained of, did not involve any acknowledgment of the alleged violations. Furthermore, the Court considers that the period of three years alone is sufficiently long to be considered problematic under the Convention (*Stamova v. Bulgaria*, no. 8725/07, § 50, 19 January 2017).

49. In these circumstances, the Court finds that the applicant may still claim to be a victim of the alleged violations in that regard. It therefore dismisses the Government's objection.

(b) **Alleged abuse of the right of individual application**

50. An application may be rejected as "an abuse of the right of individual application" within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on untrue facts. The submission by an applicant of incomplete information may likewise amount to an abuse of the right of individual application, especially

if the information concerns the core of the case or essential evidence and the failure to disclose it has not been sufficiently explained. A failure on the applicant's part to bring to the Court's attention important developments taking place during the proceedings may also constitute such abuse (see *S.A.S. v. France* [GC], no. 43835/11, § 67, 1 July 2014, and *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references). However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross*, cited above, § 28).

51. It is true that in the instant case the applicant's legal representative did not inform the Court about the refund received by the applicant in 2012, before the Government were given notice of the application. However, the Court notes that the applicant's submissions were not knowingly based on untrue facts. Nor anything suggests that the applicant's representative's omission was intended to mislead the Court. It also observes that, when notice of the application was given to the Government on 13 September 2017, the parties were explicitly invited to provide information as to whether the applicant had received any reimbursement. In reply, the Government informed the Court about the payment, and that information was later confirmed by the applicant in his submissions.

52. In these circumstances, there are no grounds to find the application abusive under Article 35 § 3 (a) of the Convention, and the Government's objection cannot therefore be allowed.

(c) Conclusion as to the admissibility of the application

53. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Article 1 of Protocol No.1

(a) The parties' submissions

54. The applicant submitted that the SAC's final judgments of 28 November 2008 and 15 December 2008 had imposed a clear obligation on the tax authorities to refund him the unduly collected sums. Instead of returning the money within thirty days as required by the statutory provisions, the authorities had used various procedural manoeuvres to delay payment. The applicant further submitted that the authorities had started enforcement proceedings against him. As a result, a number of his assets had been frozen and then later sold at public auctions. Finally, he claimed that he had received a refund after almost four years, during which time he had been forced to participate in various sets of proceedings. In his opinion,

he had thus been placed in a state of uncertainty which amounted to an unjustified interference with his rights under Article 1 of Protocol No. 1.

55. The Government disagreed with the applicant. In their view, the final judgment in the proceedings was the Varna District Court's judgment of 14 March 2012 dismissing the tax authorities' claim of nullity in respect of the SAC's judgment of 28 November 2008. They considered that there had been no delay on the part of the authorities since they had refunded the sums due soon after that judgment had come into force. In their opinion, the tax authorities' claims of nullity in respect of the SAC's judgments had been in accordance with the law, had been pursued in the public interest and had not overstepped the authorities' margin of appreciation in ensuring the collection of taxes.

(b) The Court's assessment

56. The Court reiterates that a debt can be a "possession" within the meaning of Article 1 of Protocol No. 1 if it is sufficiently established to be enforceable (see *Stran Greek Refineries and Stratis Andreadis v. Greece*, 9 December 1994, § 59, Series A no. 301-B, and *Burdov*, cited above, § 40). Likewise, the impossibility for an applicant to obtain the execution of a judgment in his or her favour in due time constitutes an interference with the right to the peaceful enjoyment of possessions, as set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see, among many other authorities, *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, § 52, 15 October 2009).

57. In the instant case, the Court notes that following a fresh tax audit of the applicant, the tax authorities issued the 2004 tax assessment. On 29 October 2007 the SAC set aside that tax assessment noting that the taxes levied on the applicant had not been due (see paragraph 11 above). Later, with its final judgments of November 2008 and December 2008 the SAC reiterated that the taxes charged to the applicant had been unduly collected. They had therefore to be returned to him by the tax authorities, together with interest, through the procedure for offset or refund (see paragraphs 32-35 above).

58. The Court also observes that in accordance with Article 129 (5) of the TSSCP, on submission of a final court judgment recognising a taxpayer's right to be reimbursed, the tax authorities were required to offset or refund within thirty days any sums that had been erroneously or unduly paid or collected for taxes, including interest (see paragraph 33 above). The Court thus finds that, on the basis of the two final court judgments in his favour and the relevant statutory provisions, the applicant had a legitimate expectation and hence a "possession" within the meaning of Article 1 of Protocol No. 1, consisting of the right to be refunded unduly paid taxes (see *Buffalo S.r.l. in liquidation v. Italy*, no. 38746/97, §§ 28-29, 3 July 2003, and *Eko-Elda AVEE v. Greece*, no. 10162/02, § 27, ECHR 2006-IV).

59. The Court further observes that the applicant received a refund of the unduly paid sums in 2012, more than three and a half years after the delivery of the SAC's final judgments (see paragraphs 28-29 above). The delay in enforcing the final judgments in his favour and refunding the unduly paid sums hence amounted to an interference with his right to peaceful enjoyment of his possession. In the Court's opinion, this situation falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No. 1, which lays down the general principle of peaceful enjoyment of property (see with respect to unduly collected taxes *Buffalo S.r.l. en liquidation*, cited above, § 31; *Eko-Elda AVEE*, cited above, § 28; and *Greece Intersplav v. Ukraine*, no. 803/02, § 33, 9 January 2007; and cases concerning non-enforcement or delay in enforcing a final judgment against the State – with respect to monetary claims see *Mancheva v. Bulgaria*, no. 39609/98, §§ 65–66, 30 September 2004; *Sirmanov*, cited above, §§ 37–38; *Pashov and Others v. Bulgaria*, no. 20875/07, §§ 60–61, 5 February 2013, and with respect to State's obligations to undertake a particular action see *Dimitar Yanakiev v. Bulgaria (no. 2)*, no. 50346/07, §§ 76-78, 31 March 2016, *Stamova*, cited above, §§ 59- 62, and *Velkova v. Bulgaria*, no. 1849/08, §§ 41-44, 13 July 2017).

60. The Court has already held with regard to the payment of taxes that the financial obligation arising out of the levying of taxes or contributions may infringe the rights guaranteed in Article 1 of Protocol No. 1 if the conditions for a refund impose an excessive burden on the person or entity concerned or fundamentally interfere with their financial security (see, to that effect, *Buffalo S.r.l. in liquidation*, cited above, § 32). In the case of *Buffalo* (cited above) the Court found that the prolonged unavailability of the tax that had been unduly paid by the applicant company had had a considerable impact on its financial situation. This, coupled with the lack of an effective remedy to expedite reimbursement and the uncertainty as to when the rebates would be paid, had upset the fair balance that had to be maintained between the general interest of the community and the applicant company's right to peaceful enjoyment of its possessions (see *Buffalo S.r.l. in liquidation*, cited above, § 32 and § 37).

61. Turning to the facts of the present case, the Court notes that instead of complying with the SAC's judgments and proceeding with the refund within thirty days as required by the statutory provisions (see paragraph 33 above), the tax authorities sought a declaration of nullity in respect of those judgments, and the reopening of the proceedings (see paragraphs 18-22 above). While the Court does not doubt that the authorities should be afforded sufficient leeway to perform their duties in the area of fiscal policy so as to secure the payment of taxes by using the available legal means, it has not been demonstrated that their repeated actions, all of which had to be dismissed, were warranted in the circumstances of this case.

62. In particular, it is clear from the documents in the case file that the tax authorities sought a declaration of nullity on grounds which clearly fell outside the grounds established by the settled case-law of the domestic courts (see paragraphs 18 and 38 above). They merely repeated their submissions which the SAC had already carefully considered and ultimately rejected in the judicial review proceedings (see paragraphs 15-16 and 18 above) and did not raise any of the legal grounds for nullity under domestic law, namely unlawfully constituted judicial panel, lack of jurisdiction of the court, lack of signatures or absolute incomprehensibility of the judgment (see paragraphs 21 and 38 above). The Government has not explained, in these circumstances, how the tax authorities' initiative to bring proceedings for nullity had any prospect of success. Nevertheless, the tax authorities pursued their actions with persistence, thereby forcing the applicant to participate in several pointless sets of proceedings (see paragraphs 18-22 above). As a result, his requests for a refund were stayed pending the outcome of the proceedings for nullity (see paragraph 17 above). The time that elapsed from the delivery of the SAC's final judgments in 2008 recognising the applicant's right to be refunded the unduly paid taxes, until their payout in 2012, was more than three and a half years.

63. Furthermore, it cannot be forgotten that the applicant had already had enforcement proceedings instituted against him several years previously leading to the auctioning of his personal belongings (see paragraph 12 above). In addition, as the standoff with the tax authorities continued after the SAC judgments in his favour he was forced to bring proceedings for damages against the tax authorities under the 1988 Act (see paragraphs 24-26 above). He also resorted to the remedy under Article 304 of the 2006 Code (see paragraph 23 above). However, these available domestic remedies turned out to be futile and did not provide him with redress for the breach of his rights.

64. In the light of the foregoing, the Court considers that the unjustified delay in enforcing the final SAC judgments and refunding the applicant the sums unduly collected from him were imputable to the State authorities and upset the fair balance that has to be struck between the general and the individual interest.

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

2. Article 13 in conjunction with Article 1 of Protocol No. 1

66. Having regard to its finding in paragraphs 61 to 63 and its conclusion in paragraph 65 above, the Court considers that no separate issue arises concerning the alleged breaches of Article 13 in conjunction with Article 1 of Protocol No.1 (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 154, ECHR 2014).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

67. 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

68. The applicant claimed EUR 20,000 in respect of non-pecuniary damage. He also sought pecuniary damage for the costs and expenses incurred in the several sets of domestic proceedings in which he had had to participate against the tax authorities. The applicant further submitted that owing to the period of time which had elapsed, he was unable to submit documents in support of his claim. He asked the Court to award him a lump sum of EUR 2,000 under this head.

69. The Government contested the claims for pecuniary and non-pecuniary damage. In their opinion the sums sought by the applicant were groundless and exorbitant. They further argued that the applicant had not produced any documents showing that the expenses claimed in the domestic proceedings had actually been incurred.

70. The Court notes that in spite of the reimbursement of the amounts due, along with the statutory interest for late payment, the tax authorities' delay in refunding the applicant the unduly paid taxes for several years must have caused him emotional distress. Making its assessment on an equitable basis, it awards the applicant EUR 3,500 in respect of non-pecuniary damage.

71. With regard to the applicant's claim for pecuniary damage, the Court considers that the costs incurred by the applicant in the domestic proceedings fall rather to be examined under the head of costs and expenses below (see, among many authorities, *Nikula v. Finland*, no. 31611/96, § 69, ECHR 2002-II).

B. Costs and expenses

72. In addition to the EUR 2,000 claimed by the applicant by way of pecuniary damage, he also sought reimbursement of EUR 1,800 in lawyers' fees incurred during the proceedings before the Court. The applicant further sought reimbursement of EUR 12.27 which his legal representatives had spent on postage, EUR 25 which they had spent on office supplies, and EUR 10 which they had spent on photocopying. Lastly, he claimed EUR 117 for the translation of the observations and claims made on his behalf into English. In support of his claim, the applicant submitted a fee agreement with his legal representatives, two invoices and bank statements

showing the payment made by the applicant to his legal representatives, a receipt showing that his legal representative had spent BGN 24 to post the original application, and a contract for translation services between his legal representatives and a translator. He requested that any award under this head, apart from the EUR 1,800 which he had already paid to his legal representatives, be made directly payable to his legal representatives' firm, Ekimdzhiev and Partners.

73. The Government submitted that the claim in respect of lawyers' fees was excessive and was not supported by a time-sheet indicating the number of hours spent by the applicant's legal representatives on the case. They also disputed the amounts spent on photocopying and on office supplies, saying that lawyers in Bulgaria had the possibility of deducting 25% of their administrative costs from their taxable income.

74. According to the Court's settled case-law, costs and expenses are recoverable under Article 41 of the Convention if it is established that they were actually and necessarily incurred and are reasonable as to quantum.

75. In the present case, the Court notes that the applicant did not submit any legal or financial documents concerning the costs and expenses incurred before the domestic courts. In the absence of such documents, the Court sees no basis on which to accept that the costs and expenses claimed by the applicant in relation to domestic proceedings have actually been incurred by him (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 372, 28 November 2017).

76. It, however, considers it reasonable to award him the sum of EUR 1,800 for the proceedings before the Court, plus any tax that may be chargeable to him, in respect of legal costs. As regards the claim for other expenses, the Court notes that the applicant did not submit any supporting documents other than a contract for translation services and a postal receipt for documents sent to the Court. In such circumstances, the Court awards EUR 130 in respect of those expenses. The latter sum is to be paid to the applicant's legal representatives.

C. Default interest

85. 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* that it is not necessary to examine the complaint under Article 13 in conjunction with Article 1 of Protocol No. 1 to the Convention;
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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,500 (three thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,930 (one thousand nine hundred and thirty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses. EUR 1,800 (one thousand eight hundred euros) of this sum is to be paid to the applicant, and the remaining EUR 130 (one hundred and thirty euros) to the firm of legal representatives Ekimdzhiev and Partners;
 - (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 28 May 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytschik
Deputy Registrar

Síofra O'Leary
President