



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

FOURTH SECTION

**CASE OF NATIONAL MOVEMENT EKOGLASNOST v.
BULGARIA**

(Application no. 31678/17)

JUDGMENT

Art 1 P 1 • Peaceful enjoyment of possessions • Environmental association ordered to pay the lawyer's fees incurred for the legal representation of successful party, a nuclear power plant, in reopening proceedings • Costs due under the "loser pays" rule, not "contributions" as not related to the court system as such, examined under the principle of peaceful enjoyment of possessions instead • Domestic rules for calculating costs applied without sufficient consideration to the specific case circumstances • Individual and excessive burden on the applicant association

STRASBOURG

15 December 2020

FINAL

15/03/2021

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

In the case of National Movement Ekoglasnost v. Bulgaria,

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

Tim Eicke, *President*,

Yonko Grozev,

Faris Vehabović,

Iulia Antoanella Motoc,

Armen Harutyunyan,

Jolien Schukking,

Ana Maria Guerra Martins, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application 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 association, National Movement Ekoglasnost (“the applicant association”), on 24 April 2017;

the decision to give notice to the Bulgarian Government (“the Government”) of the complaint under Article 1 of Protocol No. 1 to the Convention concerning the allegedly excessive amount of costs that the applicant association was ordered to pay for the respondent party’s legal representation in proceedings for reopening and to declare the remainder of the application inadmissible; and

the parties’ observations;

Having deliberated in private on 20 October and 24 November 2020,

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

INTRODUCTION

1. The case concerns the question whether an allegedly excessive costs award made against the applicant, an environmental association, for the legal representation of the successful respondent party, a nuclear power plant, in reopening proceedings amounted to unjustified interference with the applicant association’s rights under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

2. The applicant association was founded in 1992 and has its registered office in Sofia. It was represented by Mr A. Kashamov, a lawyer practising in Sofia.

3. The Government were represented by their Agent, Ms V. Hristova, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. THE APPLICANT ASSOCIATION'S LEGAL STATUS

5. The applicant association was registered as a non-profit legal person in 1992 in accordance with the Persons and Family Act 1949 (see paragraph 35 below). Its main goals were to work towards the resolution of environmental problems in Bulgaria and to disseminate information about the environment.

6. On 1 January 2001 the Non-Profit Legal Persons Act 2000 came into force ("the 2000 Act", see paragraph 36 below). It provided that legal entities registered under the previous regime were to preserve their legal status under the new law without the need to apply for new registration.

7. In April 2005 the applicant association sought to be included in the Ministry of Justice's central register of non-profit legal persons acting for the public benefit.

8. In May 2005, citing the expiry of the three-year statutory time-limit for registration laid down in the 2000 Act (see paragraph 36 below), the Ministry of Justice refused the applicant association's request for entry in the register.

9. The applicant association remained registered only in the register of non-profit legal persons.

II. BACKGROUND

10. The Kozloduy Nuclear Power Plant ("the KNPP") is the only nuclear power plant in Bulgaria. It is a single-member joint-stock company whose shares are wholly owned by the State.

11. The KNPP has six pressurised water reactors. The first four units were shut down between 2002 and 2006 as one of the preconditions for Bulgaria's accession to the European Union ("the EU"). Units 5 and 6 came into operation in 1987 and 1991 respectively. In 2017 the service life of unit 5 was extended until 2027. In 2019 the operational licence for unit 6 was also extended until 2029.

12. In July 2014, following a request made by the KNPP in the context of an investment proposal to extend the service life of units 5 and 6 of the nuclear power plant, the Minister of the Environment and Water decided that it was not necessary to carry out an environmental impact assessment in connection with the proposal.

13. In August 2014 a non-governmental organisation, the Coalition for Sustainable Development ("the CSD"), sought judicial review of the Minister's decision before the Supreme Administrative Court ("the SAC").

14. In February 2015 the applicant association requested leave to join the proceedings as an interested party.

15. On 18 March 2015 a three-judge panel of the SAC declared that request inadmissible. The court noted that according to section 1, subsection 30, of the supplementing provisions of the Environmental Protection Act 2002 (“the EPA”; see paragraph 38 below), the Minister’s decision was an individual administrative act (*индивидуален административен акт*) and not a general administrative act (*общ административен акт*). Therefore, no third party could join the proceedings under Article 182 § 3 of the Code of Administrative Procedure 2006, invoked by the claimant (see paragraphs 45-46 below). Instead, the applicant association, which was to be regarded as being among the “members of the public concerned” (*засегната общественост*) within the meaning of section 1, subsections 24 and 25, of the supplementing provisions of the EPA (see paragraph 40 below), could have lodged an individual judicial review claim within fourteen days from the date of publication of the impugned decision (see paragraph 38 *in fine* below). The court found that, as that decision had been published on the Ministry’s website on 25 July 2014, at the time the applicant association’s request to intervene was lodged the fourteen-day time-limit for seeking judicial review had already expired.

16. The applicant association did not appeal against that decision.

17. On 28 October 2015 the three-judge panel of the SAC found that the Minister’s decision was lawful and dismissed the legal challenge brought by the CSD. It also ordered the CSD to pay 300 Bulgarian leva (BGN, approximately 150 euros (EUR)) for the Environment and Water Ministry’s legal representation by an in-house lawyer, and BGN 30,000 (approximately EUR 15,000) in costs incurred for the KNPP’s legal representation.

18. The applicant association and the CSD lodged an appeal on points of law with a five-judge panel of the SAC.

19. On 17 March 2016 a five-judge panel of the SAC found the applicant association’s appeal on points of law inadmissible. The court noted that the association had not taken part in the administrative proceedings. It had also failed to bring a separate judicial review claim under the EPA. Likewise, it had not been a party to the proceedings before the first-instance court, since its request to join those proceedings had been dismissed by the court. The applicant association had further failed to challenge the court’s decision of 18 March 2015 (see paragraphs 15-16 above) within the statutory time-limits. It therefore had no right to appeal on points of law against the first-instance judgment.

20. On the merits, the SAC upheld the court’s ruling, fully agreeing with the three-judge panel as to the lawfulness of the Minister’s decision. It also went on to order the CSD to bear the costs incurred for the defendants’ legal representation in the cassation proceedings. It awarded the Ministry

BGN 300 (approximately EUR 150) for its legal representation by an in-house lawyer, and awarded BGN 18,000 (approximately EUR 9,000) to the KNPP in respect of lawyer's fees.

III. REOPENING OF THE PROCEEDINGS

21. On an unspecified date in 2016 the applicant association sought the reopening of the proceedings before a seven-judge panel of the SAC. Relying on Article 239 § 5 of the Code of Administrative Procedure 2006 (see paragraph 47 below), it submitted that its right of access to a court had been breached by the SAC's refusal to admit its appeal on point of law for examination.

22. On 29 September 2016 the SAC held a hearing in which it heard the parties without collecting new evidence. The applicant association's lawyer argued that the association had been denied the right to lodge an appeal on points of law and to participate as a party to the proceedings concerning the Minister's decision not to carry out an environmental impact assessment on extending the service life of the nuclear power plant's reactors. That matter concerned the general public and the SAC had already accepted that the applicant association could be regarded as a member of the public concerned within the meaning of the EPA (see paragraphs 15 above and 40 below). Consequently, the association had a separate right to participate in the proceedings on points of law.

23. The KNPP's lawyer pleaded that the applicant association's request for reopening was inadmissible. She also sought to be awarded the costs for the company's legal representation in the proceedings for reopening initiated by the applicant association. In reply, the applicant association's lawyer objected, arguing that the costs claimed were excessive. He pointed out that the subject matter of the proceedings concerned the citizens' right to a clean and healthy environment and not the price of the nuclear power plant's reactors. Allowing the costs claim as in main proceedings thus amounted to a direct violation of Article 6 of the Convention.

24. On 24 October 2016 the seven-judge panel of the SAC dismissed the request for reopening. It noted that the applicant association's request for leave to join the proceedings had been refused by the SAC's decision of 18 March 2015 (see paragraph 15 above). Since that decision had not been appealed against it had become final. The issue with regard to the applicant association's participation in the proceedings had thus been finally adjudicated and the ruling was binding on the courts in both the cassation proceedings and the proceedings for reopening. The court went on to state that no breach of the rules of procedure had occurred on the basis of which the applicant association could be considered to have been deprived of its right to take part in the proceedings.

25. The SAC also ordered the applicant association to pay BGN 12,000 (approximately EUR 6,000) of the amount of BGN 24,000 (approximately EUR 12,000) claimed by the KNPP in lawyer's fees for the reopening proceedings. It ordered the association to pay the minimum remuneration provided for in the Regulation, namely BGN 300 (approximately EUR 150; see paragraph 51 below) for the Ministry's legal representation by an in-house lawyer. In determining the amount of the costs, the SAC held:

"Given the outcome of the case, the costs are to be borne by the claimant and should be awarded in favour of the defendants in accordance with the claims, submitted in a timely manner, in the amount of 300 Bulgarian leva – the minimum remuneration for a lawyer determined under the Regulation adopted pursuant to section 36, subsection 2 of the Bar Act – for the representation of the Ministry of the Environment and Water. The court finds the claimant's objection to the allegedly excessive amount of the lawyer's fees paid by the KNPP to be justified in view of the actual factual and legal complexity of the case, and accepts that they [the lawyer's fees] should be awarded in the amount of 12,000 Bulgarian leva."

IV. OTHER REQUESTS FOR REOPENING OF THE PROCEEDINGS

26. In two separate sets of proceedings the CSD also sought the reopening of the proceedings on the grounds that newly discovered evidence had emerged which could significantly alter the outcome of the case. The applicant association also took part in those proceedings, supporting the CSD's requests.

27. Both requests were rejected by a seven-judge panel of the SAC, on 14 July 2017 and 18 December 2017 respectively. In view of the outcome of the proceedings, in the first set of proceedings the SAC ordered the CSD to pay BGN 200 (approximately EUR 100) for the Ministry's legal representation by an in-house lawyer, and BGN 5,000 (approximately EUR 2,500) of the amount of BGN 24,000 originally claimed by the nuclear power plant in costs for the KNPP's legal representation.

28. In the second set of proceedings the SAC awarded BGN 200 (approximately EUR 100) for the Ministry's legal representation by an in-house lawyer, and BGN 2,000 (approximately EUR 1,000) of the amount of BGN 21,000 (approximately EUR 10,500) originally claimed by the nuclear power plant in costs for the KNPP's legal representation.

V. ENFORCEMENT PROCEEDINGS AGAINST THE APPLICANT ASSOCIATION

29. Meanwhile, on 27 October 2016, at the request of the KNPP, the SAC issued a writ of execution against the applicant association for an amount of BGN 12,000 (approximately EUR 6,000).

30. In December 2016 enforcement proceedings were opened against the applicant association. A bailiff collected a total sum of approximately BGN 34 (approximately EUR 17).

31. On 26 April 2017 the bailiff scheduled a date for carrying out an inventory of the applicant association's movable property.

32. On 18 April 2018 the summons officer who was sent to deliver the notice for voluntary compliance recorded on the summons that the debtor association could not be found at its registered address and that the premises were occupied by a State institution.

33. At the time of the latest information from the parties the enforcement proceedings against the applicant association were still pending.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW

A. The Constitution

34. The relevant provisions of the 1991 Constitution read as follows:

Article 55

“Citizens shall have the right to a healthy and favourable environment corresponding to the established standards and norms. They must preserve the environment.”

Article 120

“1. The courts shall review the lawfulness of the administrative authorities' acts and decisions.

2. Natural and legal persons shall have the right to seek judicial review of any administrative act or decision which affects them, save as expressly specified by statute.”

B. Registration of associations

35. Before the entry into force of the 2000 Act on 1 January 2001 the formation, registration, organisation, activities and winding-up of non-profit legal persons such as associations and foundations was regulated by the Persons and Family Act 1949. An association acquired legal personality after its entry in the register kept by the relevant regional court.

36. The 2000 Act (see paragraph 6 above), which superseded parts of the 1949 Persons and Family Act, provided for two categories of associations – those registered for the public benefit and those working for a private interest. Under paragraph 1 of the transitional and concluding provisions of the 2000 Act, non-profit legal persons which were registered under the previous regime retained their legal personality without being required to

apply for new registration under the 2000 Act. Non-profit legal persons wishing to be designated as acting for the public benefit, a status which could give some tax advantages, had to submit an application for registration in the central register kept by the Ministry of Justice within three years from the entry into force of the 2000 Act. The status of non-profit legal person working for the public benefit was to be acquired from the date of registration.

37. If a non-profit legal person carried out activities in breach of the Constitution, the law and morals, it could be wound up by a decision of the regional court with territorial jurisdiction (section 13, subsection 3(b) of the 2002 Act).

C. Proceedings under the Environmental Protection Act 2002

38. At the material time, the provisions of the 2002 EPA provided that an environmental impact assessment was mandatory for all the schemes listed in a schedule to the Act (section 92, point 1). In other cases, an environmental impact assessment could be carried out after the competent authorities assessed the necessity for that (section 93(1)). In particular, in relation to investment proposals and their extension or amendment concerning sites designated by an act of the Council of Ministers as being of national importance, like the KNPP, the 2002 EPA provided that the assessment of the necessity was to be carried out by the Minister for the Environment and Water (section 93(2), point 4, and section 94(1), point 5). The Minister was to decide within one month from the submission of the investment proposal whether or not to carry out an environmental impact assessment. The Minister's decision was an individual administrative act (paragraph 1, point 30 of the supplementing provisions), which had to be notified to the investor and made public. The persons concerned could seek judicial review before the SAC within fourteen days from notification of the decision (section 99(6)).

39. The right of public participation in decision-making and the right of access to justice in environmental matters are recognised by section 3, subsections 4 and 11 of the EPA.

40. Section 1, subsection 24 of the supplementing provisions defines "members of the public" as one or more natural or legal persons and their associations, organisations or groups established in accordance with the national law. Subsection 25 defines "the members of the public concerned" as the members of the public under subsection 24, including environmental non-governmental organisations established in accordance with the national legislation which are affected or are likely to be affected, or which have an interest in proceedings for the approval of plans, programmes and investment proposals, and in decisions on the issuance or updating of permits under the 2002 EPA or on the conditions laid down in such permits.

D. Costs in judicial review proceedings

41. Article 143 of the Code of Administrative Procedure 2006 (“the 2006 Code”) lays down a general cost-shifting rule in judicial review proceedings, namely that costs follow the event. According to the first paragraph of Article 143, if a court quashes an administrative decision or a public authority’s refusal to issue one, the costs of the litigation – court fees, the fees of one lawyer, and other expenses – must be borne by that authority. If, on the other hand, the court dismisses the claim for judicial review or the party which has brought it withdraws it, that party must bear all costs incurred in relation to the proceedings, including the minimum remuneration for one lawyer, determined in accordance with the regulation adopted under section 36(2) of the Bar Act 2004 (Article 143 § 4). In the latter case, the party in whose favour the administrative decision is given is also entitled to costs (Article 143 § 3).

42. Under Article 144 of the 2006 Code, all matters not specifically dealt with in the part of the Code governing judicial review are governed by the Code of Civil Procedure.

43. Article 78 § 1 of the Code of Civil Procedure 2007 provides that the expenses paid by the claimant – litigation costs and the fees of one lawyer – must be borne by the defendant in proportion to the part of the claim which was upheld. If the lawyer’s fees paid by a party are excessively high having regard to the legal and factual complexity of the case, the court may order the payment of a lower amount in respect of costs at the request of the opposing party, provided that the amount does not fall below the minimum amount set out in the Regulation on the minimum amounts of lawyers’ fees (Article 78 § 5).

44. According to the case-law of the domestic courts, in cases where there are no grounds to reduce the amount of the costs awarded to the winning party’s legal representation, the court may order the payment of the entire amount paid by the party and is not obliged to adhere to the minimum amounts laid down in the Regulation (тълк. решение № 3 от 13.05.2010 г. по тълк. д. № 5/2009 г., ОСК на ВАС).

E. Other relevant provisions of the 2006 Code

45. Under the 2006 Code individual administrative acts may be challenged before a court, on grounds of unlawfulness, by the persons affected by them, within fourteen days from notification (Articles 145 § 1, 147 § 1 and 149 § 1).

46. General administrative acts may be challenged within one month from notification or within fourteen days from the individual notification of the act to the persons who participated in the proceedings before the administrative body (Article 179). Anyone with a legal interest may join the

judicial review challenge or intervene as a party alongside the administrative body, until the beginning of the oral pleadings (Article 182 § 3).

47. The reopening of administrative judicial proceedings is permissible on the grounds that a party was deprived of the opportunity to participate in the proceedings as a result of a breach of the statutory rules or was not duly represented, or where the party was unable to appear in person to or be represented owing to an obstacle which it was unable to remove (Article 239 § 5).

48. Administrative judicial proceedings may be reopened on a number of additional grounds such as the discovery of new evidence or a finding that a witness made false statements, or a document was forged (Article 239).

F. The Bar Act 2004

49. Section 36 of the Bar Act 2004 provides that the lawyer is entitled to remuneration for his or her work (subsection 1). The amount of the fees is to be determined by an agreement between the lawyer and the client. That amount must be fair and justified and may not be lower than the amount provided for in the Regulation issued by the Supreme Bar Council for the type of service concerned (subsection 2). The negotiation between the lawyer and his client of an amount lower than the fees provided for in the Regulation for the type of service concerned constitutes a disciplinary offence and may entail disciplinary liability on the part of the lawyer (section 132(5)).

G. Regulation on the minimum amounts of lawyers' fees

50. The Regulation provides that the amount of remuneration for the lawyer's legal assistance must be agreed freely on the basis of a written contract with the client but may not be lower than the minimum amount set forth by the Regulation for the corresponding service.

51. At the material time the minimum lawyer's fee for legal representation and legal assistance in civil cases concerning claims not subject to pecuniary assessment (*неоценяеми искиове*), which was also applicable to the amount of remuneration for an in-house lawyer, was fixed at BGN 300 (approximately EUR 150; section 7(1), point 4). Under section 1 of the supplementing provisions, which provided that for non-regulated matters the remuneration was to be fixed by analogy, that amount was likewise applicable to legal representation in judicial review proceedings concerning claims not relating to a specific pecuniary interest.

52. The minimum fees applicable to a request for reopening of the proceedings were to be fixed at three-quarters of the minimum fees

applicable to the main proceedings, but not less than BGN 300 (approximately EUR 150). If the lawyer had to attend a court hearing, the minimum fees could not be less than BGN 500 (approximately EUR 250; section 9(4)).

53. In a judgment of 2 May 2017 a five-judge panel of the SAC upheld the three-judge panel's ruling setting aside parts of the Regulation concerning the minimum remunerations in civil cases regarding claims involving pecuniary interests on the ground that the amounts of the minimum remuneration adopted by the Supreme Bar Council were calculated solely by reference to the pecuniary interest of the case (решение № 9273 от 27.07.2016 г. на ВАС по адм. д. № 3002/2015 г., потвърдено с решение № 5485 от 2.05.2017 г. на ВАС по адм. д. № 1403/2017 г., 5-членен с-в). The SAC found that, to be fair and justified, the minimum lawyer's fees had to be based on two objective criteria: (i) the volume and the complexity of the work performed by the lawyer, and (ii) the value of the protected interest involved in the case (*величината на защитавания интерес*). An increase in the minimum lawyer's fees as a result of an increase in the minimum wage in the country failed to consider the first criterion and therefore contravened section 36 of the Bar Act. In the SAC's view, the right of the self-governing Bar Association to itself determine the minimum fees for lawyers' work had to be balanced against the public interest. Hence, on the one hand, the highly responsible work of lawyers was not to be underestimated and made dependent on market mechanisms; on the other hand, its value must not be set at an unjustifiably high level such as to impede citizens' and legal entities' access to qualified legal assistance or to be an instrument enabling one party or the other to exert economic pressure in the proceedings. According to the SAC, that would negatively affect the rule of law (решение № 9273 от 27.07.2016 г. на ВАС по адм. д. № 3002/2015 г.).

54. In several more recent judgments, the SAC confirmed its finding made in the judgment of 2 May 2017 (see paragraph 53 above) to the effect that the sums fixed in the Regulation were calculated only by reference to the pecuniary interest in the dispute and failed to take into consideration the actual volume and complexity of the work carried out by the lawyer. Accordingly, such fees could not be regarded as fair and justified as required by section 36(2) of the Bar Act. The courts were therefore called upon to assess the two above-mentioned criteria in each case so as not to allow unjust enrichment of the parties by awarding costs which were not fair and justified (see решение № 2800 от 26.02.2019 г. на ВАС по адм. д. № 5907/2018 г., решение № 2804 от 26.02.2019 г. на ВАС по адм. д. № 3781/2018 г., решение № 4408 от 14.04.2020 г. на ВАС по адм. д. № 7914/2019 г., решение № 5728 от 16.04.2019 г. на ВАС по адм. д. № 789/2018 г., решение № 3513 от 9.03.2020 г. на ВАС по адм. д.

№ 7400/2019 г.; решение № 5263 от 30.04.2020 г. на ВАС по адм. д. №15010/2018 г.).

H. Average income in Bulgaria in 2017

55. According to the National Statistics Institute of the Republic of Bulgaria, in 2017 average total annual income per capita was BGN 5,586 (approximately EUR 2,793).

II. RELEVANT INTERNATIONAL LEGAL MATERIALS

56. The United Nations Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (“the Aarhus Convention”) was adopted on 25 June 1998 and came into force on 30 October 2001. Bulgaria ratified the Convention in 2003. The Convention entered into force with respect to Bulgaria on 16 March 2004.

57. The Aarhus Convention promotes public participation in decision-making and access to justice concerning issues with an environmental impact. In particular, the relevant provisions which deal with access to justice in environmental matters may be found in *Tătar v. Romania*, no. 67021/01, 27 January 2009 and *Austin v. the United Kingdom* ((dec.), no. 39714/15, §§ 27-28, 12 September 2017).

THE LAW

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

58. The applicant association complained that the allegedly excessive amount of the costs that the SAC had ordered it to pay for the legal representation of the KNPP, the successful respondent party in proceedings for reopening, was in breach of its right to peaceful enjoyment of its possessions. It relied on 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. Arguments by the parties

(a) The Government

59. The Government submitted, in substance, that the complaint was incompatible *ratione personae* with the Convention since it was doubtful whether the applicant association had the legal personality to be considered a valid petitioner for the purposes of Article 34 of the Convention. They noted that the association had been refused entry in the register of non-profit legal persons acting for the public benefit (see paragraphs 7-9 and 36 above). There was no information about any public activities carried out by the applicant association beyond its participation in the impugned proceedings. The Government also referred to the fact that the applicant association's registered address had been occupied by another organisation (see paragraph 32 above). In their view all these factors suggested that the applicant association had been wound up back in 2005.

(b) The applicant association

60. The applicant association contested the Government's submissions. It referred to the 2002 Act, which provided that non-profit legal persons registered under the previous law retained their legal personality under the 2002 Act (see paragraph 36 above). It also submitted that non-profit legal persons were wound up by the courts and that no such proceedings had ever been brought against it. The applicant association pointed out that it was one of the first environmental organisations in Bulgaria to have actively participated in a number of court cases concerning environmental matters. In support of that argument the applicant association submitted a list of cases in which it had participated before the domestic courts.

2. The Court's assessment

61. The Court observes that a legal entity "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention and the Protocols thereto" may submit an application to it, provided that it is a non-governmental organisation within the meaning of Article 34 of the Convention (*Radio France and Others v. France* (dec.), no. 53984/00, § 26, ECHR 2003-X (extracts)). The Government contested that the applicant association had the required legal personality to do so. The Court notes that the applicant association participated in the domestic proceedings and that its legal personality has never previously been disputed. Nor its entry in the register of non-profit legal persons acting for the public benefit has any relation to its existence as a legal entity. Based on the documents in the case file it is evident that it continues to exist as a legal person and to take part in various environment-related proceedings. The

Government did not provide any evidence that the applicant association had been wound up or been the subject of winding-up proceedings. There is no indication that the applicant association does no longer exist as a legal entity. Nor is there any indication that the applicant association does not qualify as a “non-governmental organisation” within the meaning of Article 34 of the Convention. The Court therefore rejects the Government’s objection as to the incompatibility *ratione personae* of the application.

62. The Court further notes that the complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Arguments by the parties

(a) The applicant association

63. The applicant association submitted that the costs award made against it by the SAC in the proceedings for reopening had amounted to an interference with its right to peaceful enjoyment of its possessions. While that interference had been based on the rules on the allocation of costs laid down in Article 143 of the 2006 Code (see paragraph 41 above) and had pursued a legitimate aim, it had failed to strike a fair balance between the general interest of society and the individual’s fundamental rights. In particular, the national legislation did not provide for sufficient flexibility with regard to the allocation of costs, since the courts could not carry out an individual assessment depending on the particular circumstances and the conduct of the parties. Instead, the costs were shifted to the losing party, without taking into consideration the nature of the proceedings, the public interest involved, the party’s financial situation and whether that party had acted in good faith. Even if the courts allowed an objection under Article 78 § 5 of the Code of Civil Procedure (see paragraph 43 above), their assessment was subjective as there were no criteria on which to evaluate whether the lawyer’s fees were excessive. Furthermore, the costs incurred for legal representation could not be lower than the minimum amounts provided for in the Regulation (see paragraph 50 above). When the pecuniary interest involved in the case was high, the minimum remuneration laid down for the lawyer’s fees could become unsustainable for the party that had lost the case.

64. The applicant association further argued that the KNPP had merely submitted a document showing that the fees due to the law office had been paid, but that it had been unclear how those fees had been calculated and what had been the value of the interest involved in the case. In comparison with the average total annual income of a Bulgarian citizen for 2017, which amounted to BGN 5,586 (approximately EUR 2,793; see paragraph 55

above), the amount of the costs award, even after its reduction by the court, had been excessive. The domestic court's assessment had further fallen short by failing to consider that non-governmental organisations were called upon to exercise the functions of a public watchdog and to defend the public interest. As a result, the applicant association had suffered disproportionate interference with its rights under Article 1 of Protocol No. 1.

(b) The Government

65. The Government questioned whether an order for costs to be paid by a private party amounted to an interference and could therefore engage the responsibility of the State under Article 1 of Protocol No. 1 to the Convention, since the present case did not concern court fees regulated by the State. They submitted that even though the KNPP was owned by the State (see paragraph 10 above), it was a private company and did not exercise public powers. Therefore, the present case had to be distinguished from cases in which the Court had found a violation of Article 1 of Protocol No. 1 in relation to court fees due to the State in civil cases.

66. If the costs order were to be regarded as an interference, the Government maintained that that interference had been lawful, had pursued a legitimate aim and had been proportionate to the aim in question. They pointed out that the "loser pays" principle was a general principle in litigation and was provided for in Article 143 § 3 of the 2006 Code. Those provisions were clear and predictable and the applicant association, which had been represented by a lawyer in the domestic proceedings, must have been familiar with them. They further argued that in the event of inadmissible or unfounded claims the award of costs pursued the legitimate aims, on the one hand, of discharging the winning party of the incurred costs and, on the other hand, of imposing discipline on individuals and legal entities on pain of bearing the costs, so that the judicial system was not overloaded with obviously inadmissible or unfounded claims.

67. The Government also submitted that the courts enjoyed discretion when awarding litigation costs. The objection under Article 78 § 5 of the Code of Civil Procedure, examined in the light of the factual and legal complexity of the case, and the possibility for the courts to reduce the amount to the minimum remuneration provided for in the Regulation, were the safeguards afforded to the unsuccessful party in the proceedings. The costs award was also limited to the fees for one lawyer. In the Government's opinion, by allowing the applicant association's objection and reducing the amount of the costs, the SAC had made a fair and proportionate costs award which had corresponded to the legal assistance provided to the KNPP and had compensated the nuclear power plant for the costs it had actually incurred. Lastly, the Government pointed out that there was no indication that the applicant association had actually paid in whole or in part the litigation costs that had been ordered.

2. *The Court's assessment*

(a) **Whether there was an interference**

68. The Court reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains 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 *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 62, ECHR 2007-I, with further references).

69. The Court notes that the applicant association’s complaint concerns a costs order issued against it by the court in proceedings for reopening obliging it to pay for the legal representation of the respondent party. In this regard, it observes that the Commission previously found that costs of a judicial procedure are “contributions” within the meaning of the second paragraph of Article 1 of Protocol No. 1 (see *X. and Y. v. Austria*, no. 7909/74, Commission decision of 12 October 1978, DR 15, p.160; *Agis Antoniadis v. the United Kingdom*, no. 15434/89, Commission decision of 15 February 1990, DR 64 p. 237; and *Aires v. Portugal*, no. 21775/93, Commission decision of 25 May 1995, DR 81, p. 48; see also *Eder v. Germany* (dec.), no. 11816/02, 13 October 2005 and *Hoare v. the United Kingdom* (dec.), no. 16261/08, § 50, 12 April 2011). This approach, with regard to court fees, was confirmed in *Perdigão v. Portugal* ([GC], no. 24768/06, § 61, 16 November 2010), where the Grand Chamber held that the obligation to pay court fees – and the corresponding regulations – was covered by the second paragraph of Article 1 of Protocol No. 1.

70. In several cases which followed *Perdigão*, cited above, the Court has examined a court order to defray the costs of the other party as an interference with the right to the peaceful enjoyment of possessions which falls within the general rule set out in the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Hoare*, decision cited above, § 51; *Cindrić and Bešlić v. Croatia*, no. 72152/13, § 92, 6 September 2016; and *Musa Tarhan v. Turkey*, no. 12055/17, §§ 72-73, 23 October 2018). In *Cindrić and Bešlić* (cited above, § 92) it further distinguished between costs related to the court system as such, and costs incurred by the winning party and due under the “loser pays” rule, indicating that only the former were to

be included in the notion of “contributions” within the meaning of the second paragraph of Article 1 of Protocol No. 1.

71. The Court notes that in the present case the costs award against the applicant association issued by the SAC concerned the lawyer’s fees incurred for the legal representation of the respondent party. Those costs were not related to the court system as such but were ordered in favour of the successful party in the proceedings. Thus, their reimbursement is not a contribution within the meaning of the second paragraph of Article 1 (see *Cindrić and Bešlić*, cited above, § 92). That being so, the Court finds that it will be more appropriate to address the costs award against the applicant association as an interference in the light of the general rule under the first sentence of the first paragraph of Article 1 of Protocol No. 1.

72. Finally, regardless under which rule of Article 1 of Protocol No.1 the complaint is examined, the principles governing the question of justification are substantially the same, involving as they do the need for the interference to be lawful and in the public interest, and to strike a fair balance between the demands of the general interest and the applicant association’s rights (see *Denisova and Moiseyeva v. Russia*, no. 16903/03, § 55, 1 April 2010).

(b) Whether the interference was lawful

73. 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 someone’s possessions should be lawful (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II). The costs award made by the SAC was based on Article 143 of the 2006 Code (see paragraph 41 above) and Article 78 § 5 of the Code of Civil Procedure (see paragraph 43 above). These provisions regulated the general cost-shifting rule in administrative proceedings and the discretion of the court to order the payment of a lower amount for costs at the request of the losing party if that court considered that the fees were excessively high. While the applicant association did not dispute that the costs award had a legal basis in the national legislation, it argued that the national legislation lacked flexibility (see paragraph 63 above). In the Court’s view, this question should more properly be examined under the heading of proportionality. It thus concludes that the costs order was lawful.

(c) Whether the interference pursued a legitimate aim

74. Any interference with a right of property, irrespective of the rule under which it falls, must have a legitimate aim (see, *mutatis mutandis*, *Hoare*, decision cited above, § 59). The Court has already held that costs are a well-established feature of the justice system (*ibid.*, § 59) and that the purpose of the “loser pays” rule is to avoid unwarranted litigation and unreasonably high litigation costs by dissuading potential plaintiffs from

bringing unfounded actions without bearing the consequences. It thus pursues the legitimate aim of ensuring the proper administration of justice and protecting the rights of others and cannot in itself be regarded as contrary to Article 1 of Protocol No. 1 (see *Klauz v. Croatia*, no. 28963/10, § 84, 18 July 2013; *Cindrić and Bešlić*, cited above, § 96; and *Musa Tarhan*, cited above, § 80). Accordingly, the costs order in the present case pursued a legitimate aim.

(d) Whether the interference was proportionate to the legitimate aim pursued

75. It remains to be determined whether the measure complained of was proportionate to the legitimate aim pursued. Any interference with the right to peaceful enjoyment of possessions must achieve a fair balance between the demands of the general interest of the community and the requirement of protecting the individual's fundamental rights (see *Beyeler v. Italy* [GC], no. 33203/96, § 107, ECHR 2000-I; *Hoare*, decision cited above, § 60; *Cindrić and Bešlić*, cited above, § 98).

76. The Court notes that in the instant case the applicant association not only challenged the manner in which the SAC had determined the amount of the costs award, alleging that it had been unfair and unjustified, but also disagreed with the Government that the applicable legal framework afforded sufficient flexibility to the national courts with regard to costs orders (see paragraph 63 above).

77. In this connection the Court reiterates that it is not its task to review the relevant legislation in the abstract but rather to examine the relevant domestic law in so far as the applicants objected to its consequences for their property rights (see *The Holy Monasteries v. Greece*, 9 December 1994, § 55, Series A no. 301-A; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 100, ECHR 2006-V; and *Kostov and Others v. Bulgaria*, nos. 66581/12 and 25054/15, §§ 77 and 86, 14 May 2020).

78. From that perspective, the Court notes that costs in administrative litigation in Bulgaria are regulated in accordance with the “loser pays” rule or the “costs follow the event” principle (see paragraph 41 above). Under this principle the unsuccessful party in the proceedings has to pay the successful party's costs. This rule is counterbalanced by two safeguards laid down in the Bulgarian legislation. On the one hand, Article 78 § 5 of the Code of Civil Procedure entitles the losing party to object to the amount of the lawyer's fees on the grounds that they were excessive. The competent court then has to assess the amount in the light of the actual legal and factual complexity of the case. If it allows the objection, the court may reduce the costs award, but cannot order an amount lower than the minimum amount provided for in the Regulation (see paragraph 43 above).

79. On the other hand, while the Bar Act enshrines the principle of freedom of contract, it likewise requires that the remuneration for the lawyer's work be fair and justified (see paragraph 49 above). The SAC

explained this provision – albeit in a judgment given after the request for reopening lodged by the applicant association – by stating that, to be fair and justified, the minimum lawyer’s fees had to be based on two objective criteria: (i) the volume and the complexity of the work performed by the lawyer, and (ii) the value of the interest involved in the case (see paragraph 53 above).

80. The Court observes that in the present case the applicant association’s request for reopening of the proceedings was dismissed. In line with that outcome, the SAC ordered the association to pay the successful parties’ litigation costs: BGN 300 (approximately EUR 150) for the legal representation of the Ministry and BGN 12,000 (approximately EUR 6,000) for the legal representation of the KNPP. In determining these amounts, the seven-judge panel of the SAC took into account the following factors: (i) the objection raised by the applicant association’s lawyer under Article 78 § 5 of the Code of Civil Procedure regarding the allegedly excessive amount of the lawyer’s fees, and (ii) the legal and factual complexity of the case (see paragraph 25 above).

81. It is evident from its judgment that the SAC calculated the costs order in favour of the Ministry by reference to the minimum remuneration provided for in the Regulation (see paragraphs 25, 51-52 above). However, save for the reference to the legal and factual complexity of the case, the ruling did not specify the way in which the SAC had evaluated the costs in favour of the KNPP and why it had ultimately awarded half of the amount sought (that is, BGN 12,000 (approximately EUR 6,000) of the amount of BGN 24,000 (approximately EUR 12,000) claimed by it, see paragraph 25 above).

82. From the documents in the case file it transpires that the fees charged to the KNPP by the law office engaged in the proceedings were incurred for the following work: a reply to the applicant association’s request for reopening, and legal representation before the SAC. In this regard, the Court notes that the statutory minimum remuneration at the material time for legal assistance in proceedings for reopening, including attendance at a court hearing, was fixed at BGN 500 (approximately EUR 250; see paragraph 52 above). The Court cannot disregard the fact that the costs order in favour of the KNPP was twenty-four times above the minimum remuneration set out in the Regulation. While it seems that the main proceedings did involve more complex legal and factual issues, the SAC did not provide any detailed explanation for its assessment of the complexity of the proceedings for reopening. In this context the Court observes that the proceedings were initiated by the applicant association on the ground that its right to participation in the cassation proceedings had allegedly been breached (see paragraphs 21-22 above). This legal issue was of a procedural nature, does not appear to be particularly complex and had to some extent already been dealt with by the SAC in the main proceedings (see paragraph 19 above).

The court also provided no reference to any method of calculation of the lawyers' fees and consequently of their reasonableness in the specific case. The proceedings did not involve the collection of new evidence and the SAC held only one hearing (see paragraph 24 above). Moreover, in the two ensuing requests for reopening lodged by another non-governmental organisation, the CSD, the SAC awarded much lower sums in lawyer's fees to the KNPP, namely BGN 5,000 (approximately EUR 2,500) and BGN 2,000 (approximately EUR 1,000; see paragraphs 27-28 above).

83. The Court acknowledges that States should be accorded a wide margin of appreciation in regulating their systems of allocation of costs in judicial proceedings (see, *mutatis mutandis*, *Perdigão*, cited above, § 70). Indeed, as already noted, Bulgarian legislation provides for a mechanism allowing a degree of review of the proportionality of the litigation costs (see paragraphs 78-79 above). However, in the present case the SAC applied those rules without giving sufficient consideration to the specific circumstances of the applicant association's case, especially the fact that the amount of the costs award had been substantial and that in the light of the complexity of the reopening proceedings and the volume of the legal work carried out, the costs order for one level of jurisdiction did not appear reasonable (compare with *Hoare*, decision cited above, § 60). Thus, by awarding such an amount in costs for the lawyer's fees of the opposing party, without providing sufficient and relevant reasons so as to ensure that those fees were actually fair and justified as required by domestic law, the SAC failed to properly balance the various interests at stake. Consequently, the applicant association suffered an individual and excessive burden which upset the requisite fair balance between the general interest of society and the individual's fundamental rights.

84. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

85. 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

86. The applicant association claimed non-pecuniary damage for the distress suffered as a result of the ongoing enforcement proceedings in relation to the costs award. It did not specify an amount, leaving the matter to the Court's discretion.

87. The Government contested the claim, arguing that according to the Court's case-law no award was to be made in the absence of a formal claim.

88. As to compensation for non-pecuniary damage, the Court has already held that damage other than pecuniary damage sustained by a legal entity may include aspects that are to a greater or lesser extent "objective" or "subjective". These aspects include the legal entity's reputation, but also uncertainty in decision-planning, disruption in the management of the legal entity itself (for which there is no precise method of calculating the consequences) and lastly, albeit to a lesser degree, the anxiety and inconvenience caused to the members of the management team (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 182, 29 November 2016). Having regard to the circumstances of the case and its case-law (see, *mutatis mutandis*, *Cindrić and Bešlić*, cited above, § 127), and making its assessment on an equitable basis, the Court awards the applicant association EUR 3,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

89. The applicant association also sought reimbursement of EUR 1,890 in lawyer's fees incurred before the domestic court and the Court. It also claimed BGN 400 for the translation into English of the observations and claims made on its behalf. In support of its claim, the applicant association submitted a fee agreement with its legal representative and a time-sheet.

90. The Government contested the above amounts. They pointed out that the costs incurred before the domestic court were not to be reimbursed. They further submitted that the claim for the translation work was not supported by any documents. They also disputed the number of hours spent by the applicant association's legal representative on the case and the amount of the lawyer's fees, which in their view was excessive.

91. 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.

92. In the present case the Court notes that it has found a violation of the applicant association's right under Article 1 of Protocol No. 1, resulting from the excessive costs award made against it by the SAC in the proceedings for reopening. That violation has been found in respect of the costs order in favour of the winning party and does not concern the expenses incurred by the applicant association in connection with its own legal representation. The Court therefore considers that the costs and expenses incurred before the domestic court were not related to the violation found and that the applicant association is not entitled to them.

93. However, it considers it reasonable to award the applicant association the sum of EUR 1,500 for the proceedings before the Court, plus

any tax that may be chargeable on that amount. As regards the claim for translation expenses, the Court notes that the applicant association did not submit any supporting documents. Accordingly, it rejects the claim under that head.

C. Default interest

94. 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 complaint under Article 1 of Protocol No. 1 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 applicant association, 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 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant association, in respect of costs and expenses;
 - (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;
4. *Dismisses* the remainder of the applicant association's claim for just satisfaction.

Done in English, and notified in writing on 15 December 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Tim Eicke
President