



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

FOURTH SECTION

CASE OF NIKOLAY KOSTADINOV v. BULGARIA

(Application no. 21743/15)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Positive obligations • Failure to protect shareholder from fraudulent takeover of his company, its shares and assets, by a private party • Lack of adequate domestic legal procedures • Failure to investigate serious suspicions that the criminal offences were carried out by a criminal group, and thus to establish their circumstances

STRASBOURG

8 November 2022

FINAL

08/02/2023

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

In the case of Nikolay Kostadinov v. Bulgaria,

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

Gabriele Kucsko-Stadlmayer, *President*,

Faris Vehabović,

Iulia Antoanella Motoc,

Yonko Grozev,

Pere Pastor Vilanova,

Jolien Schukking,

Ana Maria Guerra Martins, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar*,

Having regard to:

the application (no. 21743/15) 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 Nikolay Kostadinov Kostadinov (“the applicant”), on 30 April 2015;

the decision to give notice of the application to the Bulgarian Government (“the Government”);

the parties’ observations;

Having deliberated in private on 4 October 2022,

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

INTRODUCTION

1. The case concerns the adequacy of the domestic authorities’ reaction to a criminal encroachment upon the applicant’s “possessions”, namely a third party fraudulently taking control of the applicant’s company and of assets of that company, and raises issues relating to the positive obligations of the State under Article 1 of Protocol No. 1.

THE FACTS

2. The applicant was born in 1971 and lives in Versailles, France. He was represented before the Court by Mr M. Ekimdzhiev, Ms K. Boncheva and Ms T. Ekimdzhieva, lawyers practising in Plovdiv.

3. The Government were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

I. THE SETTING UP OF THE APPLICANT'S COMPANY

5. In 2004 the applicant and his sister set up a limited liability company – Vandom OOD (hereinafter “Vandom”) – with its registered office in Sofia. The two co-founders each owned 50% of the company shares.

6. On 14 December 2004 Vandom bought a plot of land measuring 5,000 square metres (hereinafter “the plot of land”), situated in an industrial zone in the vicinity of Varna, with a view to its economic development.

II. D.A.'S ACTIONS AND INITIAL EVENTS RELATED TO THEM

7. On 27 December 2007 Vandom signed a contract with a bank for a mortgage on the plot of land, intended to secure a bank loan for the company. The respective documents were presented to an official of the property register on 28 December 2007. However, when the company attempted to actually receive the money loaned, the applicant and his sister were informed of another transaction concerning the plot.

8. They thus found out that on 28 December 2007 D.A., a person unknown to them, acting as a representative of Vandom, had sold to himself the plot of land. For the purposes of the sale he had presented an authority form and other documents, found subsequently to have been forged, seemingly signed by the applicant's sister, who had been the company's manager at the time. That transaction had also been presented to an official of the property register on 28 December 2007, later than the transaction described in the previous paragraph, but had been entered into the register first.

9. On 18 January 2008, through a real property agency to which he explained that he was in a hurry to resell, D.A. resold the plot of land to a third party – H.H. The declared price was 16,250 Bulgarian levs (BGN), the equivalent of 8,312 euros (EUR). The property was once again resold in 2010, to a company named V.

10. In February 2008, the applicant's sister, on behalf of Vandom, brought *rei vindicatio* proceedings against H.H. However, in April 2009 the action was declared inadmissible, after I.D. – a person indicated in the company register as the manager of the company – discontinued the proceedings.

11. The applicant and his sister thus became aware that they were no longer considered shareholders in Vandom. As a matter of fact, on 27 December 2007 the same D.A. had introduced with the Sofia City Court a request to have new circumstances concerning Vandom entered into the register of companies. He had presented in particular the following documents, which had subsequently been shown to be forged: minutes of a meeting of the shareholders of Vandom (the applicant and his sister) dated 12 August 2007, containing a decision on their part to transfer their shares to a third party, and an authority form dated 10 December 2007 whereby the applicant and his sister seemingly authorised D.A. to sell their shares.

12. On the basis of those and other documents, in a decision of 23 January 2008 the Sofia City Court had entered in the register of companies the transfer of all shares to D.A., D.A. as the sole owner and manager of the company, and a new registered office for the company in Gabrovo.

13. In September 2008 D.A. had transferred all shares in Vandom to another person, who, in turn, had resold them in December 2008. The company's registered office had once again been moved, this time to Blagoevgrad. All the above changes had been entered into the register of companies.

14. The applicant and his sister, who had already in January 2008 complained to the prosecution authorities of D.A.'s fraudulent actions with respect to the plot of land, also complained of the fraudulent appropriation of their company. They considered that both actions could have been the work of an organized group, and suggested in particular that H.H. and I.D. (see paragraphs 9-10 above) could have been involved.

15. The prosecution opened criminal proceedings against D.A. only and brought him to court.

16. In one set of criminal proceedings D.A. agreed to a plea bargain, which was approved on 1 October 2012 by the Sofia District Court. D.A. admitted to having knowingly submitted forged documents, namely those described in paragraph 11 above, to a public official. It was noted in the agreement signed by the parties that he was not liable for creating these documents. D.A. accepted a suspended sentence of one year's imprisonment. Under the Criminal Code, the punishment for that offence is up to two years' imprisonment.

17. In another set of proceedings, on 22 November 2011 the Varna District Court convicted D.A. of aggravated fraud, since he had fraudulently sold the plot of land to himself, causing damage to Vandom assessed at BGN 785,000, equivalent to EUR 401,000; the latter circumstance rendered the case "particularly grave". D.A. was additionally convicted of having knowingly used forged documents, namely those mentioned in paragraph 8 above, but it could not be proven that it was he who had created the documents. D.A. explained in the proceedings that at the time he had had worked as a driver, and his employer had asked him to acquire the plot of land for him.

18. The penalty provided under the Criminal Code for aggravated fraud is between three and ten years' imprisonment. While the domestic court considered that in the case the aggravating circumstances were prevalent, it also referred to the fact that the criminal proceedings had been summary, in which case it was permitted to reduce any imprisonment sentence by one third. Without further explanation, it sentenced D.A. to eleven months' imprisonment, suspended for three years.

19. The judgment above was upheld by the Varna Regional Court and became final on 19 January 2012.

III. ACTION TAKEN BY THE APPLICANT AND HIS SISTER IN DEFENCE OF THEIR SHAREHOLDING

20. In 2011 the applicant and his sister brought proceedings against Vandom under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure (see paragraphs 41-42 below), seeking the removal from the register of companies of the entries described in paragraphs 12-13 above.

21. At the start of the proceedings the claimants applied for interim measures, seeking in particular the garnishment of all shares in Vandom, a prohibition on the company's managers (as recorded in the register) taking any managerial decisions and the suspension of all future entries in the register concerning the company. However, despite finding that the action brought by them was admissible and probably meritorious, on 3 October 2011 the Blagoevgrad Regional Court refused to order the measures sought, considering them inappropriate. It also found those measures excessive, since they would "hamper the activities of the company". The Sofia Court of Appeal upheld that ruling in a final decision of 9 January 2012.

22. In a judgment of 8 June 2012, the Blagoevgrad Regional Court dismissed the action brought by the applicant and his sister. On appeal, the Sofia Court of Appeal reversed that decision and allowed the claims on 24 March 2013. On the basis of an expert report, the Sofia Court of Appeal found that the documents used for the transfer of the company shares to D.A. had not been signed by the claimants; the latter had thus never authorised or agreed to the transfer of their shares. The court held that the respective entries in the register of companies concerning the acquisition of Vandom by D.A. in 2008 were null and void, as were the subsequent transfers of shares to other parties and the respective entries in the register.

23. The above-mentioned judgment became final on 13 May 2014, when the Supreme Court of Cassation refused to accept the case for a cassation review. The judgment was published in the register of companies on 15 September 2014.

24. In the meantime, while the proceedings described above were pending, new entries were made in the register of companies in respect of Vandom. These concerned: a transfer of shares in Vandom and the appointment of a new manager, entered in the register on 19 November 2012; a transfer of shares, the appointment of a new manager and notice of a new registered office, entered on 27 March 2013; the garnishment of the shares of one of the shareholders imposed by the fiscal authorities, entered on 11 March 2014; and an increase in the company's capital, entered on 22 May 2014.

25. In September 2014 the applicant applied to the Registry Agency – the body tasked from 2008 with keeping the register of companies (see paragraph 38 below) – to make the relevant changes in Vandom's file arising from the final judgment in his favor described in paragraphs 22-23 above.

However, his request was refused in a decision by an official of that agency dated 17 September 2014. Three reasons were given: firstly, the entries in the register concerning Vandom made between 2012 and 2014 (see paragraph 24 above) had not been declared null and void; secondly, the garnishment of some of the shares prevented the removal of that particular shareholder from the register; thirdly, the request to remove the statement of the increase of the company's capital was inadmissible, seeing that such an action would impinge on the rights of third parties, including the tax authorities.

26. On an appeal by the applicant, the above-mentioned refusal was upheld on 13 October 2014 by the Varna Regional Court and later, on an unspecified date in 2014, by the Varna Court of Appeal.

27. Soon afterwards, the applicant and his sister brought a new action under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure (see paragraphs 41-42 below), seeking the removal of the entries in the register concerning Vandom made between 2012 and 2014 (see paragraph 24 above).

28. At the start of the proceedings the claimants once again requested the imposition of interim measures to secure their claim, specifically the garnishment of all shares in Vandom, a prohibition on the company's managers (as recorded in the register) taking any managerial decisions, and the suspension of all future entries in the register concerning the company. In a decision taken on an unspecified date in December 2014, the Varna Regional Court ordered some of those measures, but its decision was reversed on 18 February 2015 by the Varna Court of Appeal, which was of the view that the measures sought amounted to an "inadmissible interference with the activities of a company". On one more occasion during the proceedings the applicant and his sister applied for interim measures. On 1 April 2015 the Varna Regional Court ordered the garnishment of all shares in Vandom, but on 30 June 2015 the Varna Court of Appeal declared the measure void, finding it excessive.

29. In a judgment on the merits given on an unspecified date in 2015, the Varna Regional Court allowed the applicant's and his sister's action, declaring the relevant entries in the register of companies null and void. However, on appeal, the Varna Court of Appeal reversed that judgment and dismissed the claims. Noting that the previous judgment declaring earlier entries null and void had been published in the register of companies on 15 September 2014 (see paragraph 23 above), and that the judgment had only had *ex nunc* effect, it considered that the persons who had acquired shares in Vandom prior to that date had acted in good faith and had validly taken various managerial decisions regarding the company. The relevant entries in the register were therefore lawful, and the action brought by the applicant and his sister had no merit.

30. The above-mentioned judgment became final on 15 November 2016, when the Supreme Court of Cassation refused to accept the case for a cassation review.

IV. OTHER PROCEEDINGS

31. In 2013 the applicant and his sister brought a new *rei vindicatio* action, both on behalf of Vandom and on their own behalf, against V. – the company who had acquired the plot of land in 2010 (see paragraph 9 above). Their intention was to prevent the expiry of the term of acquisitive prescription in favour of V. In a judgment of 20 December 2019, the Varna Regional Court declared the claims of the applicant and his sister inadmissible for lack of legal standing. As to the action brought on behalf of Vandom, it was allowed only in so far as the sale of the plot of land to D.A. in December 2007 was declared null and void. The domestic court did not additionally order that V. surrender possession of the land, since Vandom's representatives had discontinued that part of the action.

32. The dismissal of the claims of the applicant and his sister became final on 5 October 2020, after it was upheld by the Varna Court of Appeal and the Supreme Court of Cassation.

33. In the meantime, in 2014 the same company V. initiated insolvency proceedings against Vandom, contending that the latter owed it large sums of money. As a matter of fact, in May 2013 the two companies had signed an agreement, whereby Vandom had promised to discontinue the proceedings described in paragraph 31 above within a short time-limit, or otherwise pay V. BGN 500,000 in damage. Since the proceedings had not been discontinued by the date agreed on, V. had considered the above-mentioned sum due to it.

34. In a judgment of 19 March 2015, the Varna Regional Court found that Vandom had had no economic activity since 2008, and rather small debts to the State. However, in May 2013 it had undertaken to pay a large sum of money to company V., and had been unable to do so. The domestic court thus declared Vandom insolvent and ordered the opening of insolvency proceedings.

35. The applicant and his sister applied for leave to join the insolvency proceedings in defence of Vandom, but leave was refused. Moreover, on 15 March 2016 the Varna Court of Appeal refused to stay those proceedings upon a request by the applicant, referring to the parallel proceedings concerning entries in the register of companies (see paragraphs 27-30 above).

36. In April 2021 the Vandom company was wound up.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

37. The main characteristics of the register of companies have been described in *Shesti Mai Engineering OOD and Others v. Bulgaria*

(no. 17854/04, § 49, 20 September 2011). At the time of the events in that case, the register was being kept by the territorially competent regional courts, which took the decisions to make entries in it (*ibid.*, § 50).

38. In 2008 the task of keeping the register of companies was taken over by the Registry Agency (*Агенция по вписванията*) – a State body overseen by the Ministry of Justice, created pursuant to the 2006 Register of Companies Act (*Закон за търговския регистър*).

39. The Register of Companies Act regulates different aspects of registration proceedings. It states in particular that the register of companies is public and freely accessible by everyone (section 11).

40. Until the end of 2011, section 19(2) provided that the competent official of the Registry Agency was to take a decision to make an entry in the register, at the latest, during the working day following the receipt of a request to do so. As of 1 January 2012, in accordance with an amendment to the Act, such a decision can only be taken after three days have elapsed following the receipt of a request. The amendment was introduced with the aim of combating company “thefts”, as the three-day period is intended to allow time for the relevant company’s representatives to contest a fraudulent request. If such an objection is made, the registration procedure is to be stayed until the dispute is resolved. The scheme is supplemented by two additional tools. Firstly, as of December 2012 the Registry Agency can send an SMS notification when a request to make entries in the register concerning a specific company has been made; in accordance with the agency’s rules published on its website, the service is available to “the people managing and representing the company”. Secondly, as of the beginning of 2013, a person can, after registering with the Registry Agency, obtain electronic access to the account of a specific company, including pending entry requests.

41. Section 29(1) of the Register of Companies Act provides that any third party having a legitimate interest to do so can bring an action to establish that an entry in the register is null and void or that a circumstance entered in the register does not exist. In accordance with judicial practice, such an action is to be brought against the company in respect of which the entry in question has been made (*Решение от 27.05.2016 г. на ОС Монтана по гр. д. № 10/2016 г.; Решение № 8 от 28.02.2018 г. на ОС Пазарджик по т. д. № 42/2017 г.; Решение № 84 от 30.04.2018 г. на ОС Видин по т. д. № 127/2017 г.*). Under section 30(1), once an action under section 29(1) has been successfully concluded and upon a request by the interested party, the Registry Agency is to erase the entry in question from the register.

42. Additional relevant provisions are contained in the Code of Civil Procedure 2007. In particular, Article 537 § 2 provides that when a decision given in non-adversarial proceedings (such as registration proceedings under the Register of Companies Act) affects the rights of third parties, any dispute is to be determined in separate judicial proceedings. The claim brought in that regard is to be directed against the persons who benefited from the impugned

decision. An action under Article 537 § 2 is to be examined under the general procedure applicable to civil proceedings, that is, in proceedings at the three levels of the court system.

THE LAW

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

43. The applicant, relying on Article 1 of Protocol No. 1 and Articles 6 § 1 and 13 of the Convention, complained of the loss of his shareholding in the Vandom company. In his view, third parties had fraudulently taken control of the company with the sole aim to appropriate the plot of land bought by it in 2004. The applicant contended that domestic law, as applied in his case, had not provided adequate means of protection.

44. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 ad 126, 20 March 2018) is of the view that the complaint falls to be examined under Article 1 of Protocol No. 1 alone (see, *mutatis mutandis*, *Shesti Mai Engineering OOD and Others*, no. 17854/04, § 64, 20 September 2011). That provision 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

45. The Government argued that the applicant had failed to exhaust the available domestic remedies because he had not brought an action in tort against D.A., the person directly responsible for the loss of his shareholding and the plot of land. According to the Government, such a claim would have been “very likely to succeed”, particularly in view of D.A.’s convictions by the criminal courts (see paragraphs 16-19 above).

46. The applicant disagreed. He pointed out that the interference with his rights had not stemmed solely from D.A.’s fraudulent actions, but also from the subsequent transfers of Vandom’s shares, the company’s bankruptcy – which he likewise considered fraudulent – and the lack of adequate mechanisms for the protection of his rights. Moreover, the Government had not submitted any domestic case-law to prove the effectiveness in practice of the remedy suggested by them.

47. The general principles concerning exhaustion of domestic remedies have been summarised in *Vučković and Others v. Serbia* (preliminary

objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014). Turning to the circumstances of the present case, the Court agrees that the loss of the applicant's shareholding in Vandom, with all the consequences it entailed, including regarding the plot of land, cannot be reduced to D.A.'s actions. The case concerns also the domestic authorities' reaction, including to the applicant's allegations that the fraud was the work of an organised group (see paragraphs 57-58 below), and the applicant's unsuccessful attempts to regain control of the company. In view also of the failure of the Government, as pointed out by the applicant, to submit relevant domestic case-law, the Court cannot conclude that he failed to make use of a remedy which, in the specific circumstances of the case, could be considered effective for the purposes of Article 35 § 1 of the Convention.

48. The Court additionally notes that the application 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. The parties' submissions

(a) The applicant

49. The applicant submitted that, since at the time the register of companies could not be electronically accessed, it had taken him time to establish what had happened in respect of Vandom. In 2008 the company's registered office had on two occasions been moved, first to Gabrovo and then to Blagoevgrad (see paragraphs 12-13 above), which had entailed a transfer of the case file to the respective court with territorial jurisdiction. After the applicant had eventually become aware that forged documents had been used to bring about the transfer of the company to D.A., he had complained to the prosecution authorities (see paragraph 14 above). According to him, it was only after D.A. had been found guilty of using forged documents (in a plea bargain with the prosecution approved on 1 October 2012 by the Sofia District Court – see paragraph 16 above) that it had become possible for the civil courts to rule in his favour in the proceedings under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure.

50. The applicant argued that, seeing that it had been found that his company had been taken over by way of actions constituting a criminal offence, the most appropriate restitution measure would have been for the authorities to order the "automatic removal" of all subsequent entries from the register of companies. Such a measure would have had to be applied quickly in order to thwart the possible loss of value of his shareholding. Such as it had been at the time, the domestic legal system had not protected him in

an adequate manner. The applicant relied in that regard on the Court's findings in *Shesti Mai Engineering OOD and Others* (cited above).

(b) The Government

51. The Government argued that the national authorities had reacted adequately to the encroachment on the applicant's rights, noting in particular that D.A.'s actions had been investigated and he had been convicted (see paragraphs 16-19), and that the courts had allowed the applicant's first claim under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure (see paragraphs 22-23 above).

52. The Government further contended that domestic law had provided the necessary safeguards for the protection of the applicant's rights. In their view, it was the applicant who had failed to make proper use of the different tools available. This was so for three reasons. Firstly, he had remained "totally passive" for a period of three years, namely from 2008, when D.A. had fraudulently taken control of his company (see paragraph 12 above), to 2011, when the applicant had for the first time brought an action under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure (see paragraph 20 above). Secondly, when bringing that action, he had not directed his claims against the shareholders in Vandom as indicated in the register of companies, but only against the company itself; had he lodged a claim in which the shareholders had been the defendants, the garnishment of their shares would have been permitted as an interim measure while the proceedings were pending. Thirdly, the applicant had not made use of the additional tools introduced in 2012 and 2013, namely the possibility of receiving SMS notifications about any entry requests concerning Vandom and of applying to have electronic access to the company's account in the register (see paragraph 40 above); in the Government's submission, those two tools could have permitted him to react quickly to the entries in the register made in 2013 and 2014 (see paragraph 24 above).

2. The Court's assessment

53. It has not been disputed between the parties that the applicant's shareholding in Vandom, together with the company's assets in 2007, amounted to "possessions" within the meaning of Article 1 of Protocol No. 1.

54. The interference with his "possessions" started with the fraudulent actions of a private party. The case concerns the domestic legal system's response to those actions, and thus the positive obligations of the respondent State. As to such obligations under Article 1 of Protocol No. 1, the Court has found that, where an interference with the right to peaceful enjoyment of "possessions" has been perpetrated by a private individual, a positive obligation arises for the State to ensure that property rights are sufficiently protected by law, and that adequate remedies are provided whereby the victim

of an interference can vindicate his rights (see, among other authorities, *Blumberga v. Latvia*, no. 70930/01, § 67, 14 October 2008, and *Papachela and AMAZON S.A. v. Greece*, no. 12929/18, § 54, 3 December 2020). In addition, even if it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation the Court must examine whether the decisions of the domestic courts and tribunals were compatible with the applicant's right to the peaceful enjoyment of possessions (see *Sovtransavto Holding v. Ukraine*, no. 48553/99, § 95, ECHR 2002-VII).

55. The Court has held, where the interference with rights under Article 1 of Protocol No. 1 had been of a criminal nature, that the State's positive obligation may in addition require that the authorities conduct an effective criminal investigation. In that respect, it is clear that such an obligation, like the corresponding procedural obligation under Articles 2 and 3 of the Convention, is one of means and not one of result; in other words, the obligation on the authorities to investigate and prosecute cannot be absolute, as it is evident that many crimes remain unresolved or unpunished notwithstanding the reasonable efforts of the State authorities. The obligation to investigate is less exacting with regard to less serious crimes, such as those involving property, than with regard to more serious ones, such as violent crimes, and in particular those which would fall within the scope of Articles 2 and 3 of the Convention (see *Blumberga*, cited above, § 67, which concerns specifically a crime against the applicant's property rights).

56. In the present case, once they learned about D.A.'s fraudulent actions with regard to their company and the plot of land, the applicant and his sister complained to the prosecution authorities (see paragraph 14 above). This was a completely reasonable step on their part, seeing that eventually D.A.'s actions were found to have amounted to criminal offences and he was convicted on two occasions (see paragraphs 16-19 above).

57. However, it has not been shown that the prosecution authorities ever investigated the applicant's suspicions that D.A. had not been acting alone, but was part of a criminal group (see paragraph 14 above). These suspicions seem serious enough so as to have merited examination, as there were indications of a complex coordinated assault on the applicant's possessions. In particular, the fraudulent appropriations of his shareholding and of the plot of land were launched within one day of each other, on 27 and 28 December 2007, and this coincided in time with an attempt of Vandom to mortgage the land (see paragraphs 7-8 and 11 above); the fraudulent sale of the plot of land by D.A. to himself, although concluded one day later, was inexplicably entered in the property register before the mortgage (see paragraph 9 above); D.A. had used numerous forged documents which he stated that he had not drawn up himself, and which was accepted by the domestic courts (see paragraphs 16-17 above); D.A. stated himself that at least one other person had been involved (see paragraph 17 above); the people having taken over

the company blocked all attempts on the part of the applicant and his sister to defend its rights (in particular in the *rei vindicatio* proceedings – see paragraphs 10 and 31 above) and eventually brought it to insolvency (see paragraphs 33-34 above).

58. While it was exactly in the criminal proceedings that the alleged existence of a criminal group could have been unravelled, it has not been shown, as mentioned, that such a possibility was ever investigated by the prosecution authorities. There could thus be doubts as to whether these authorities took what could be seen as reasonable efforts to uncover the scope of the criminal offences against the applicant and the actual people involved, and possibly prosecute them. Yet, this could have been crucial for the defence of the applicant's rights, seeing in particular that the supposed good faith of the people having acquired Vandom in 2012-14 was the main reason for the rejection of his second claim under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure (see paragraph 29 above).

59. The Court lastly takes note of the inexplicably low sentence D.A. was given for the property fraud, in light of the considerations given by the domestic court (see paragraph 18 above).

60. There are therefore serious doubts as to whether the authorities' investigation met the requirements set in paragraph 55 above, even taking into account the proviso that the obligation to investigate is less exacting when it comes to the right to property.

61. The applicant took further steps available under domestic law to defend his rights. Most notably, he pursued the remedy under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure (see paragraphs 20 and 27 above). He brought two sets of proceedings, and on each occasion sought interim measures aimed at preventing further action by third parties in respect of Vandom while the proceedings were pending (see paragraphs 21 and 28 above).

62. The applicant was successful in the first set of proceedings brought in 2011 (see paragraphs 20 and 22 above). He obtained the removal from the register of companies of the three entries concerning the transfer of Vandom's shares in 2008 – the initial transfer to D.A. and the subsequent transfers to other parties. However, on account of the national courts' refusals to order interim measures and thus prevent the people who were exercising control over Vandom from making further transfers of its shares (see paragraph 21 above), such transfers were actually made between 2012 and 2014 while the proceedings initiated by the applicant were pending (see paragraph 24 above). Thus, the applicant being successful in those proceedings achieved little in practice, since he was required to bring fresh proceedings under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure (see paragraph 27 above). The second time he was unsuccessful, because the national courts found that the people who had taken over Vandom

while the first set of proceedings had been pending had acted in good faith, precisely because they had acquired the shares while the first set of proceedings had been pending, and before the final decision eventually reached in them had been entered into the register (see paragraph 29 above).

63. It has not been submitted that after the dismissal of his claims in the second set of proceedings, the applicant retained any chance of restoring his shareholding.

64. Therefore, the applicant was not able to restore his shareholding through the remedy under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure, as applied in his case. The question that remains to be answered is whether, as the Government argued, this was the result of his own failure to take appropriate action.

65. The Government contended that the applicant should have brought an action under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure on an earlier date (see paragraph 52 above). Indeed, his first action of that type was brought in 2011 (see paragraph 20 above), whereas the “theft” of his company took place at the beginning of 2008 (see paragraphs 11-12 above) and the applicant apparently became aware of it in 2009 (see paragraph 11 above). However, the Court takes note of the applicant’s explanations concerning the initial difficulties he encountered in unravelling the relevant events, at a time when the register of companies was not accessible electronically and the company’s seat had been moved to different cities (see paragraphs 12-13 and 49 above). In addition, while the applicant was not obliged to await the conclusion of the criminal proceedings against D.A. concerning the company “theft”, there is no doubt that the findings reached in them could have relieved the burden of proof for him in the proceedings under examination; it was not thus unreasonable on his part to await and see their unfolding. As was discussed above (see paragraphs 57-58 above), he might also legitimately have expected, at least during its early stages, that the criminal investigation concerning D.A.’s actions would shed more light on a wider criminal scheme concerning, among other things, his shareholding in Vandom.

66. Furthermore, the Court has not been satisfied that, had the applicant initiated proceedings earlier, their outcome would have been different, in particular that he would have been able to effectively oppose the further transfer of the company shares while such proceedings were pending, transfers which could render fruitless any positive outcome of such proceedings. The impossibility to prevent any transfers of shares while proceedings under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure were pending is at the heart of the complaint under examination, and has also been criticised in *Shesti Mai Engineering OOD and Others* (cited above, § 85).

67. As to the Government’s further argument that the applicant should have brought his action against the shareholders in Vandom who were listed

in the register at the relevant time (see paragraph 52 above), that argument does not appear to be supported by domestic law and judicial practice, according to which an action of the type brought by the applicant is to be directed against the person who has benefited from the contested entry in the register of companies, in particular the company concerned by that entry (see paragraphs 41-42 above).

68. Lastly, the Government argued that the applicant should have made use of the tools introduced by the Registry Agency at the end of 2012 and in 2013 (see paragraph 52 above), but have not proven that they were in practice available to him, seeing that he was not, according to the register of companies, entitled to represent or act in the interests of Vandom. This appears to have been an impediment at least in relation to his ability to subscribe to the Registry Agency's SMS notification service (see paragraph 40 above). In addition, even if the applicant had been able to subscribe and had received the due notifications, it is doubtful that he would have been able to take any valid action to contest the entries into the register made in 2012, 2013 and 2014 (see paragraph 24 above), seeing that he was not considered a lawful representative of Vandom.

69. In view of the above, the Court sees no reason to conclude that the applicant failed to make due use of the domestic procedures for the protection of his rights as a shareholder in Vandom, as available at the relevant time.

70. As in the similar case of *Shesti Mai Engineering OOD and Others* (cited above, § 87), the Court is of the view that the precariousness and the patent unlawfulness of the situation engendered by D.A.'s criminal actions against the applicant's shareholding in Vandom called, in the first place, for the availability of urgent measures to prevent the situation from unfolding to the detriment of the applicant. The interim measures sought by the applicant could have, in principle, satisfied this requirement, as they could preserve the company's situation; had this happened, the positive outcome of the first proceedings lodged by the applicant under section 29(1) of the Register of Companies Act and Article 537 § 2 of the Code of Civil Procedure could have permitted him to restore effectively his shareholding. However, the domestic courts refused to order the measures sought, giving general reasons without accounting for the specific circumstances (see paragraphs 21 and 28 above). As already discussed, this made possible further action by third parties to the detriment of the applicant's rights.

71. In the absence of interim measures, in the very similar situation which obtained in *Shesti Mai Engineering OOD and Others* (cited above, § 89), the Court took the view that "a much more expedited response on the part of the courts" was required, taking into account the "urgency of the situation" and permitting shareholders affected by the actions of third parties to defend their shareholding in an effective manner. However, in the present case, as in *Shesti Mai Engineering OOD and Others*, the proceedings whereby the applicants contested entries into the register of companies followed the general

procedure through three levels of the court system (see paragraph 42 above). While in the present case the overall duration of those proceedings – from 2011 to 2014 (see paragraphs 20 and 22 above) – could be said not to be in itself excessive, if they are to be seen as ordinary civil proceedings, what the Court required in *Shesti Mai Engineering OOD and Others* (cited above, § 89) were not ordinary civil proceedings; as noted, what was considered necessary in the absence of interim relief was a “fast-track” procedure capable of responding adequately to the urgency of the situation.

72. A procedure capable of providing rapid relief and taking into account the need of urgent action was introduced into Bulgarian law in 2012: under section 19(2) of the Register of Companies Act as it is phrased now, the competent official of the Registry Agency is to take a decision to make an entry in the register three days after the receipt of a request to so do, thus allowing time for the relevant company’s representatives to contest any fraudulent request (see paragraph 40 above). However, at the time when the applicant lost control of his company, namely at the beginning of 2008 (see paragraph 11-12 above), the procedure was not yet available.

73. The applicant attempted to make use of further remedies to defend his rights: on two occasions he and his sister brought *rei vindicatio* proceedings on behalf of Vandom to reclaim the plot of land (see paragraphs 10 and 31 above), and he attempted to intervene in the insolvency proceedings against the company and, once again, defend it (see paragraph 35 above). However, he was unsuccessful in these attempts. As long as he was not entitled to act in Vandom’s name, as per the register of companies, he was considered to have no standing in the respective sets of proceedings.

74. To sum up the findings above, while the applicant used a panoply of remedies seeking to defend his rights, he was ultimately unsuccessful. Most notably, the criminal investigation opened upon his complaints, even though resulting in two convictions for D.A., appears to have failed to shed light on all relevant circumstances and on the suspected larger scale of the criminal assault against the applicant’s property rights; this hampered the use of the subsequent remedies. At the same time, the procedures under the Register of Companies Act and the Code of Civil Procedure, as available at the time, did not permit the applicant to oppose adequately the actions of third parties to the detriment of his shareholding, and as a result to oppose the fraudulent sale of Vandom’s property.

75. In view of the considerations above, the Court concludes that the respondent State has not met its positive obligation to ensure that the applicant’s “possessions” were effectively protected through his use of the legal means available at the time.

76. There has accordingly been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

77. 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

78. The applicant claimed 330,272 euros (EUR) in respect of pecuniary damage, corresponding to the value of his shares in Vandom. He claimed an additional EUR 10,000 in respect of non-pecuniary damage.

79. The Government contested those claims.

80. The Court considers that the question of the application of Article 41 is not ready for decision, in so far as it concerns the claims in respect of pecuniary and non-pecuniary damage, and reserves it, due regard being had to the possibility that an agreement between the respondent State and the applicant will be reached (Rule 75 § 1 of the Rules of Court).

B. Costs and expenses

81. The applicant also claimed EUR 2,400 for reimbursement of the costs of his legal representation before the Court. In support of that claim he submitted a contract for legal representation and invoices. He claimed an additional EUR 384 for translation expenses, submitting a contract for translation services. He requested that the latter sum be paid directly to the law firm of his legal representatives, Ekimdzhiev and Partners.

82. The Government contested that claim, considering in particular the amount claimed for legal representation excessive.

83. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court awards the costs and expenses sought, namely EUR 2,784, in full. As requested by the applicant, EUR 384 of that amount is to be paid directly to the law firm Ekimdzhiev and Partners (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, 15 December 2016).

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;
3. *Holds* that the question of the application of Article 41 of the Convention, in so far as it concerns pecuniary and non-pecuniary damage, is not ready for decision; accordingly,
 - (a) reserves the said question;
 - (b) invites the Government and the applicant to submit, within six months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
 - (c) reserves the further procedure and delegates to the President of the Chamber the power to fix the same if need be;
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, EUR 2,784 (two thousand seven hundred and eighty-four euros) in respect of costs and expenses, plus any tax that may be chargeable to the applicant, to be converted into the currency of the respondent State at the rate applicable at the date of settlement; of that amount, EUR 384 (three hundred and eighty-four euros) is to be paid into the bank account of the law firm Ekimdzhiev and Partners;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 8 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Deputy Registrar

Gabriele Kucsko-Stadlmayer
President