



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

SECOND SECTION

CASE OF NASKOV AND OTHERS v. NORTH MACEDONIA

(Applications nos. 31620/15 and 2 others)

JUDGMENT *(Merits)*

Art 1 P1 • Peaceful enjoyment of possessions • *Proprio motu* quashing of final restitution order conferring on the applicants' title to a plot of land, owing to the legal and factual impossibility of enforcing the order on account of third parties having constructed structures on the land in the meantime • Interference in breach of lawfulness principle and not foreseeable

Prepared by the Registry. Does not bind the Court.

STRASBOURG

12 December 2023

FINAL

12/03/2024

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

In the case of Naskov and Others v. North Macedonia,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Pauliine Koskelo,

Lorraine Schembri Orland,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the applications (nos. 31620/15, 34859/15 and 14659/16) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by ten Macedonians/citizens of the Republic of North Macedonia (“the applicants”), on various dates (see appended table);

the decision to give notice to the Government of the Republic of North Macedonia (“the Government”) of the complaint concerning Article 1 of Protocol No. 1 to the Convention;

the parties’ observations;

Having deliberated in private on 21 November 2023,

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

INTRODUCTION

1. The case concerns the applicants’ complaint under Article 1 of Protocol No. 1 to the Convention about a *proprio motu* quashing of a final restitution order conferring on the applicants’ title to a plot of land, owing to the legal and factual impossibility of enforcing the order on account of third parties having constructed structures on the land in the meantime.

THE FACTS

2. The applicants were born in various years (see appended table) and live in Skopje. They were represented by Ms R. Paskoska, a lawyer practising in Skopje.

3. The Government were represented by their acting Agent, Ms D. Djonova.

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

I. BACKGROUND OF THE CASE

5. On various dates in 1950 and 1955, two plots of land (former plots nos. 100 and 126) were expropriated from the late B.N. and S.N., the applicants' predecessors. B.N. and S.N. received compensation for the expropriated property. The 1950 expropriation was of agricultural land for the purpose of forming an agricultural economy. The expropriated land was later divided into several new plots, which were renumbered in accordance with the new land register (*нов премеј*). Former plot no. 100 was divided into three plots including plots nos. 2943/3 and 2943/6, and former plot no. 126 was divided into plots nos. 2940/1 and 2943/1.

6. On 15 May and 9 November 2001 the Skopje Court of First Instance declared the applicants as the successors to B.N. and S.N.

II. RELEVANT EVENTS RELATING TO THE LAND IN QUESTION

7. An agricultural company, T., obtained the right to use former plot no. 100 in the 1990s, and the company's entitlement to use the land continued in the 2000s.

8. In April 1997 T., in the context of an intention to restructure itself in accordance with the relevant provisions (see paragraph 50 below), issued a public call (published in the Official Gazette no. 16/97) and called on former owners and their legal successors to submit claims for protection of their rights in relation to the company's property. The applicants did not submit such a claim.

9. On 21 March 1998 and 25 May 2001, respectively, the G.D. company (formerly T.) concluded agreements with two other companies, S. and F., for joint investment. On 16 May and 16 November 2001 G.D. obtained construction permits to build a petrol station and business premises on the land at issue. G.D. paid more than 8,000,000 Macedonian denars (MKD - equivalent to approximately 132,876 euros (EUR)) towards the joint development of the land.

10. On 11 July 2001 the Directorate for Property Affairs (*Управа за имотно правни работи*) of the Ministry of Finance issued decisions granting G.D. a priority right to use the undeveloped building land for building a petrol station and business premises.

11. On 6 June 2002, following an appeal by the Solicitor General (*Јавен Правобранител*), the Government Appeal Commission ("the Appeal Commission") quashed the decisions of the Directorate for Property Affairs (see paragraph 10 above).

12. On 6 November 2002 G.D. registered the title to the business premises, which had been constructed in the meantime, at the Land Registry. On 7 November 2002 G.D. agreed to sell the business premises and the petrol station to F. and S. respectively, and transferred to them the right to

permanent use of the land, which formed part of the plot in respect of which the applicants submitted their restitution claim. Those agreements were certified by a notary public on 10 December 2002 and 15 February 2003 respectively. The title to the petrol station and the business premises were registered at the Land Registry in the name of the S. and F. companies respectively. The value of the business premises was estimated by the tax authorities at MKD 23,300,500 (EUR 378,872).

13. On 20 March 2003 the Supreme Court confirmed the findings of the Appeal Commission of 6 June 2002 (see paragraph 11 above). The court held that under the Building Land Act, in accordance with which all building land had belonged to the State at that time, it was only the previous owner (a physical person) of undeveloped building land, or his or her successors, who could obtain a priority right to build. The company, being a legal person, could not obtain that right. On 16 August 2003, by fresh decisions of the Directorate for Property Affairs, G.D.'s requests for a priority right to use the land were dismissed for the reasons stated in the Supreme Court's judgment.

III. RESTITUTION PROCEEDINGS INITIATED BY THE APPLICANTS

14. On 7 December 2001 the applicants submitted a claim to the Restitution Commission of the Ministry of Finance ("the Restitution Commission") for the restitution of former plots nos. 100 and 126 (rather than seeking compensation), which had been expropriated from their late predecessors. A copy of the claim had previously been submitted to the Solicitor General, who had not commented on it.

15. On 20 February 2002 three representatives of the Commission for establishing the functionality of undeveloped building land (*Комисија за утврдување на функционалноста на градежно неизградено земјиште кое се бара да се врати во сопственост на катастарска парцела на која постои објект*) within the Ministry of Finance ("the Functionality Commission") carried out an on-site inspection. On 22 February 2002 they issued a report in that regard. The relevant parts of the report stated, *inter alia*:

"Former plot no. 100 consists of new plots nos. 2943/3, 2943/6 and 6798, on which preparatory construction work has begun: on the day the inspection was carried out, the construction site was fenced off and initial digging had started ...

According to the cadastral records (*катастарот на недвижности*), plots nos. 2943/3 and 2943/6 are registered in land register (*имотен лист*) no. 30165 as an orchard ... and as undeveloped building land ... to which (a company) G.D. has an established right (*утврдено право*).

Since preparatory construction work has begun on the site and there is no information as to its legal basis, we consider that the [Restitution Commission] should examine the circumstances in order to decide whether the land in question can be returned or not, given the fact that no buildings have been constructed on the plot."

16. On 24 June 2002 the Restitution Commission, relying on the report of 22 February, granted the applicants' restitution claim in part ("the 2002 restitution order") and returned the relevant parts of former plot no. 100 (consisting of 5,776 sq. m of the new plot no. 2943/3, and 2,260 sq. m of the new plot no. 2943/6), and former plot no. 126 (consisting of 3,120 sq. m of the new plot no. 2940/1, and 3,014 sq. m of the new plot no. 2943/1) to them. The applicants were obliged to return part of the compensation that their predecessors had received in the 1950s. Part of plot no. 100, comprising 2,364 sq. m, was not returned as it was found to be developed building land (*градежно изградено земјиште*) – part of a street and the surrounding greenery – for which compensation had been provided to the applicants' predecessors. The relevant part of the restitution order stated:

"... an on-site inspection of plots nos. 2943/3 and 2943/6 was carried out ... and established that the land in question was undeveloped building land (*градежно неизградено земјиште*), but that preliminary construction work had been undertaken, the legal basis of which should be determined.

... the Restitution Commission established that the current user, G.D., by a decision of the Ministry of Finance ..., had been recognised as having a priority right to construct a petrol station and business premises [on the plots in question]. The construction had been started in February 2002 as established by the [Functionality Commission], when the applicants had already submitted their restitution claim on 7 December 2001.

... taking into consideration section 72 of the Restitution Act, which provides that property which is the subject of restitution cannot be disposed of after the entry into force of the Act, the [Restitution] Commission held that the land in question could be returned, as the [construction permits] were issued after the Restitution Act and its amendments had come into force, and the construction work had begun after the restitution claim had been submitted."

17. On 18 July 2002 the 2002 restitution order became final. The Solicitor General did not appeal against the order. The applicants registered their property rights in the Land Registry on the basis of the final restitution order.

18. On 25 September 2002 the applicants asked the Restitution Commission for the property forming the subject of the restitution order to be transferred into their possession.

19. On 29 April 2003 the applicants submitted another request to the Restitution Commission, claiming that G.D. had continued to build the petrol station and the business premises on former plot no. 100, regardless of the fact that the priority right that had been recognised, namely to use the land in order to build the business premises in question, had been revoked (see paragraphs 10 and 13 above).

IV. EXTRAORDINARY PROCEEDINGS AFTER THE 2002 RESTITUTION ORDER BECAME FINAL

20. On 3 September 2002, 22 August and 12 September 2003 respectively, G.D., the public prosecutor and the Solicitor General submitted

requests under section 268 of the General Proceedings Act (see paragraph 50 below) for the Restitution Commission and the Appeal Commission to declare the 2002 restitution order null and void (*барање за огласување ништовно*) in the part concerning plots nos. 2943/3 and 2943/6. G.D. argued that it had not been involved in the restitution proceedings and had not been able to protect its legal interests. In particular, it had not been able to point out that there were legally built structures on the plots in question, for which substantial amounts of contributions and taxes had been paid to the State budget, and thus it should not be placed in a situation in which it suffered a detriment. The public prosecutor argued, *inter alia*, that the applicants had been given developed building land, as structures had been constructed on the plots in question and one part was a public street, and that the applicants could have been granted other appropriate agricultural land instead. The Solicitor General submitted that the value of the plots in question was almost 500 times higher than when they had been expropriated. The applicants could have been financially compensated, given that they had not submitted a claim when G.D. had issued the public call (see paragraph 8 above).

21. On 20 November 2003 the Appeal Commission granted the requests under section 267(1)(5) of the Administrative Proceedings Act (see section 49 below).

22. On 5 November 2004 the Supreme Court quashed the Appeal Commission's decision, relying on sections 20 and 72 of the Restitution Act (see paragraphs 36 and 45 below), in accordance with which restitution orders could not be declared null and void on the ground of their unenforceability. The court stated, *inter alia*:

“... the Restitution Act entered into force on 7 May 1998, and [the relevant amendments] ... on 28 April 2000 ... since the entry into force of the Restitution Act, no changes of fact or law regarding a property [subject to restitution] are allowed. In practical terms this means that since the entry into force of the Restitution Act, a property subject to restitution cannot be disposed of, no construction work can be carried out on it ... and no decisions conferring rights on third persons can be made in respect of such property ... the only legal issue of relevance for the merits of a restitution claim is the state of the property, actual and legal, at the time when the Restitution Act entered into force ... the [Supreme] Court also finds that section 267(1)(5) of the Administrative Proceedings Act on which the [Appeal Commission] based its findings in the disputed decision was not correctly applied ... In the case at issue, the body did not refer to any explicit statutory provision under which the decision of the [Restitution Commission] encompasses a ground for nullity. In particular, no such statutory provision is included in the Restitution Act ... the [Supreme] Court considers it appropriate to point out that if the property in question had the status of undeveloped building land when the Restitution Act came into force and there have subsequently been actual and legal changes, the established legal relations between the owners or their successors and third persons will be resolved in accordance with the Property Act.”

23. Consequently, the court found it irrelevant that the building permit for the construction of a petrol station pre-dated the applicants' restitution claim. It ruled that the relevant parts of plots nos. 2943/3 and 2943/6 should therefore

be returned into the applicants' possession since they had been undeveloped when the Restitution Act entered into force. The relevant parts of those plots had remained undeveloped after the restitution claim had been submitted, as was clear from the on-site inspection report of 22 February 2002. In such circumstances, the court held that the plot had been correctly returned to the applicants, under section 28(2) of the Restitution Act (see paragraph 36 below).

24. On 12 December 2005 the plenary session (*опшната седница*) of the Supreme Court dismissed a request by the public prosecutor for a review of the legality (*барање за заштита на законитоста*) of the Supreme Court decision, and upheld the judgment of 5 November 2004. The court held, *inter alia*, that, under section 8 of the Restitution Act (see paragraph 35 below), regardless of the fact that the applicants' predecessors had been compensated at the time of the expropriation, because the plots in question still existed and were considered undeveloped building land, they could be returned to the applicants, who would be obliged to return the compensation received.

25. On 16 May 2006 the Appeal Commission again declared the restitution order in part null and void. On 22 December 2006 the Supreme Court quashed the Appeal Commission's decision and instructed it to comply with that court's judgment of 5 November 2004 (see paragraph 22 above).

26. On 22 March 2007 the Appeal Commission dismissed the requests of the public prosecutor and the Solicitor General, and rejected G.D.'s request (see paragraph 20 above).

27. On 27 March 2008 the newly established Administrative Court (*Управен суд*), which had, in the meantime, become the authority with jurisdiction to decide appeals in administrative disputes, dismissed on points of law (*тужба за управен спор*) an appeal by the Solicitor General. It emphasised that the state of the land on the date when the Restitution Act came into force was the relevant criterion for the restitution of the plots in question. Thus, all subsequent construction work on those plots had been carried out contrary to section 72 of the Restitution Act. The order could not be declared null and void on the grounds of its unenforceability and any dispute arising between the owners of the land and third parties could be solved under the Property Act.

V. PARTIAL *PROPRIO MOTU* QUASHING OF THE 2002 RESTITUTION ORDER

28. On 27 April 2009 the applicants asked the Restitution Commission to return to their possession the plots of land that had been the subject of the restitution order.

29. On 17 September 2012, after two remittals, once by the Appeal Commission and once by the newly established High Administrative Court (*Висш управен суд*), the Restitution Commission, on the basis of section

267(1)(3) of the Administrative Proceedings Act (see paragraph 49 below), declared the 2002 restitution order null and void in the part referring to former plot no. 100. The Commission returned to the applicants part (1,943 sq. m) of former plot no. 100, which had become plot no. 2943/12, and the request for the other 8,457 sq. m was dismissed. The Commission found that the part of the plot that was impossible to return was occupied by the petrol station, business premises, a public street and a fruit orchard. The restitution order which referred to the former plot no. 126 (see paragraph 16 above) remained unaffected. The Commission held that on 12 March 2010 it had made an on-site inspection and had attempted, in the presence of its president and members, and the applicants, to enforce the 2002 restitution order, but had established that parts of the plot were occupied by a public street, a petrol station and business premises for which there was proper documentation, and that those parts could therefore not be returned. On 26 June 2013 the Administrative Court dismissed the applicants' subsequent appeal. On 20 February 2014 the High Administrative Court ruled in favour of the applicants, altered (*преиначи*) the Administrative Court's decision and quashed the Restitution Commission's decision of 17 September 2012. The court emphasised that it was unacceptable (*неприфатливо*) for a final decision to be declared null and void in administrative enforcement proceedings. In addition, the court clearly acknowledged that the state of the land in question had been changed during the restitution proceedings, on the basis of building permits and technical documentation that had never been revoked, but held that that situation should have been resolved under the Property Act and not by declaring the 2002 restitution order null and void. The court also endorsed the reasoning of the previous judgments of the Supreme and Administrative Courts (see paragraphs 22, 24, 25 and 27 above).

30. On 14 March 2014, the Restitution Commission again declared the 2002 restitution order in part null and void. That decision was upheld by the Administrative Court and the High Administrative Court on 6 May and 21 October 2015 respectively. The latter found that the part in which the 2002 restitution order had been declared null and void was legally and factually unenforceable. The panel of the High Administrative Court which gave that decision was largely the same as the one that had given the judgment of 20 February 2014 (see paragraph 29 above).

VI. OTHER ADMINISTRATIVE AND CIVIL PROCEEDINGS INITIATED BY THE APPLICANTS

31. On 4 and 5 December 2001 the applicants asked the Ministry of Transport and Communications (*Министерство за транспорт и врски*) to terminate and ban construction on former plots nos. 100 and 126 on account of the restitution proceedings that the applicants were to initiate (see paragraph 13 above). On 19 April and 31 July 2002 they submitted claims

seeking the revocation of the building permits for the petrol station and the business premises (see paragraph 9 above) respectively. On 9 and 21 August 2002, after an on-site inspection of the construction sites, it was noted that the petrol station and the business premises were in the final phase of construction. After several remittals, the applicants' claims were dismissed by final decisions of the High Administrative Court on 21 October 2014 and 12 December 2014. The court held that the applicants had not had *locus standi* at the time when the proceedings for obtaining the building permits were ongoing. In addition, as the restitution order had been made after the building permits had become final, it could not serve as a new fact or evidence for reopening the proceedings in which the building permits had been issued.

32. On 28 February 2002 the applicants lodged a request for an interim measure with the Skopje Court of First Instance no. 2, contending that they had initiated restitution proceedings and that the court should therefore order G.D. to discontinue construction work on former plot no. 100. On 22 July 2003 the first-instance court rejected the applicants' claim because of a lack of jurisdiction; that decision was upheld by the Skopje Court of Appeal on 1 April 2004.

33. On 12 December 2003 the applicants instituted civil proceedings against G.D., S. and F., seeking to have the sales agreements for the petrol station and the business premises (see paragraphs 9 above) declared null and void. They also requested an interim measure against the three companies preventing them from disposing of the structures that they had built until the resolution of the main proceedings, which was granted in part. On 4 July 2013 the Court of Appeal held that the agreements were permissible and lawful and dismissed the applicants' claim.

34. On 23 December 2004 the applicants instituted further civil proceedings against G.D., S. and F., seeking the removal and/or demolition of the petrol station and the business premises. In the alternative, they argued that either they should obtain the title to the structures that had been built, for which they would compensate the respondent parties, or the respondent parties should retain the structures and obtain the title to the plots, for which they would compensate the applicants. The applicants also claimed rent for the companies' use of the plots after the 2002 restitution order had been issued. On 3 April 2018 the first-instance court dismissed the applicants' claims, as the restitution order in the relevant part had been declared null and void, and they no longer had *locus standi* to continue those proceedings.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RESTITUTION ACT, CONSOLIDATED VERSION (*ЗАКОН ЗА ДЕНАЦИОНАЛИЗАЦИЈА, ПРЕЧИСТЕН ТЕКСТ*, OFFICIAL GAZETTE, NO. 43/2000), STILL IN FORCE WITH FURTHER AMENDMENTS

35. Section 8 of the Restitution Act provides that a property in respect of which compensation was provided when it was expropriated can be returned only if still exists and its return is possible, subject to the return of the compensation provided.

36. Sections 20-28 set out details as regards restoration of possession (*враќање во сопственост*). Section 20 provides that property will be returned, fully or in part, in the state which it was in at the date of entry into force of the Act. Property can be returned in part if the claimant consents and if this is feasible.

37. Under section 24, the returned property will be transferred into the claimant's possession on the basis of his or her request to the restitution authority. If the returned property is in the possession of a user of the property, he or she will be obliged to return the property in the presence of the restitution authority.

38. Section 27 provides that if the original purpose of the confiscation of agricultural land has not been achieved, or if that purpose has been achieved but the land was undeveloped at the time when the restitution claim was submitted, the claimant can seek to have that land returned to him or her, or to obtain other similar agricultural land, or to be awarded compensation.

39. Section 28(2) provides that title to building land is to be restored if the purpose of the confiscation has not been achieved, or if that purpose has been achieved but the land was undeveloped at the time when the restitution claim was submitted.

40. Sections 37 and 38 set out details as regards compensation (*надоместок*). Section 37 provides that compensation can be awarded for property which cannot be returned. The state of the property at the time of confiscation will be taken as the basis for calculating the amount of compensation.

41. Under section 38, another property of the same type, or State-owned shares, can be awarded as compensation for property which cannot be returned. Otherwise, State bonds will be awarded.

42. Section 51 of the consolidated version of the Act provides that a restitution claim can be lodged within five years from the day of the entry into force of the Act. After the expiry of that time-limit, a claim for restitution can be lodged only if there are no legal or physical obstacles, and in any case at the latest seven years from the day of the entry into force of the Act. After the expiry of the seven-year time-limit, compensation can be requested in

civil proceedings, and the property can be returned if there are no legal or physical obstacles to doing so.

43. Section 52 provides that when a claimant has the right to make a choice, he or she should do so before the restitution order is issued, within a time-limit set by the Restitution Commission. If the claimant does not choose within the set time-limit, the Restitution Commission will prioritise the restitution of the property.

44. Section 63 provides that third parties can exercise their rights against successful claimants to whom property has been returned or compensation paid on the basis of the Restitution Act by means of a civil action with the relevant court within five years of the date on which the restitution order became final.

45. Section 72(1) and (2) provides that property which is the subject of a restitution order cannot be disposed of after the entry into force of the Act. Legal measures taken and unilateral declarations made contrary to subsection (1) are null and void.

46. By virtue of subsequent amendments to the Restitution Act in 2007 (Official Gazette no.44/2007; the amendments entered into force on 14 April 2007), section 51 (see paragraph 42 above) became section 49, under which restitution claims could be made only in restitution proceedings and were to be submitted no later than 31 December 2007. After that date, the right to claim restitution ceased to exist. Following the expiry of the five-year time-limit from the day of entry into force of the Act, compensation can be requested and the property can be returned if there are no legal or physical obstacles to doing so. All civil compensation claims submitted before the amendments made in 2007 entered into force had to be conducted under the provisions which were applicable before 14 April 2007.

47. By virtue of subsequent amendments to the Restitution Act in 2013 (Official Gazette no. 55/2013; the amendments entered into force on 24 April 2013) section 22-b(2) provides that title to undeveloped land on which the land-use plans in force at the time when the restitution claim is being decided envisage the construction of properties of public interest cannot be restored, but compensation will be given.

II. ADMINISTRATIVE PROCEEDINGS ACT (*ЗАКОН ЗА ОПШТАТА УПРАВНА ПОСТАПКА*, OFFICIAL GAZETTE, NO. 38/2005)

48. This Act was in force between 3 June 2005 and 31 July 2016. Under section 264 of the Act, a decision could be quashed (*решение за укинување*) or annulled (*решение за поништување*) on an application by, among others, the public prosecutor or the Solicitor General.

49. Section 267(1) of the Act provided that a decision could be declared null and void (*прогласување на решение за ништовно*) in the following cases: (1) if it had been delivered in administrative proceedings despite the

fact that its subject matter was within the jurisdiction of a court; (2) if enforcement of the decision would give rise to a crime punishable under the Criminal Code or other laws; (3) if the decision was impossible to enforce; (4) if the decision had been issued in the absence of a claim; or (5) if it contained an error (*неправилност*) which was specified in an explicit statutory provision as a ground for nullity.

50. Under section 268(1) and (2), a decision could be declared null and void at any time of the court's own motion, or at the request of a party to the proceedings or the public prosecutor. An order could be made for either partial or full nullity.

III. OTHER RELEVANT PROVISIONS

51. Other relevant domestic law and practice concerning the confiscation of property by the State is set out in *Stojanovski and Others v. the former Yugoslav Republic of Macedonia* (no. 14174/09, §§ 25-32, 23 October 2014) and *Vikentijevik v. the former Yugoslav Republic of Macedonia* (no. 50179/07, §§ 31-49, 6 February 2014).

IV. RELEVANT DOMESTIC PRACTICE

52. In its decision U.br.72/2006 dated 14 March 2007, the Constitutional Court decided not to initiate proceedings for a review of the constitutionality of sections 16, 22-b(1) and (2), and 64 (which with subsequent amendments became section 72 – see paragraph 45 above) of the Restitution Act. It found that the provisions were not unconstitutional. The Constitutional Court emphasised that the aim of the Restitution Act was to protect the interests of previous owners and their successors, and to protect property that had been confiscated by the State, rather than the interests of the users of the property, who were able to protect their rights and interests in different proceedings. The right of third parties to use land could not compete with the property rights of the previous owners, which enjoyed constitutional protection. Thus, the only parties to restitution proceedings were the claimants and the Solicitor General, who protected the State's interests.

53. The Government submitted copies of judgments in which the legal successors of former owners of property expropriated by the State had successfully obtained compensation for the property in civil proceedings, as provided for by the Restitution Act:

(a) In October 2017 the Supreme Court (*Peв.2.6p.288/2016*) rejected a plea of inadmissibility by the Solicitor General's Office, which had claimed that the protection of the right of property by means of awarding compensation could be afforded only in restitution proceedings. The Supreme Court relied on section 49 of the 2007 amendments to the Restitution Act (see paragraph 46 above). The Supreme Court upheld decisions of the lower courts

ordering the State to compensate the claimants in State bonds. Their predecessor had not been compensated when the property had been expropriated.

(b) On 5 February 2010 the Skopje Court of Appeal (*ГЖ.бп.-5025/09*), by a final judgment, upheld a first-instance decision ordering the State to compensate the claimants for the expropriated property, as it could not be returned to them. The court accepted the civil claim because the time-limit for submitting a restitution claim in administrative proceedings had expired. Their predecessor had not been compensated when the property had been expropriated.

(c) On 2 December 2013 the Bitola Court of Appeal (*ГЖ.бп.-2822/13*) upheld a first-instance decision ordering the State to compensate the claimants, whose successful restitution claim could not be enforced as their plot had already been transferred to third parties owing to a mistake by the Restitution Commission.

THE LAW

I. JOINDER OF THE APPLICATIONS

54. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

55. The applicants complained that the *proprio motu* quashing of the final restitution order conferring on them title to the land on which the petrol station and the business premises had been built had violated their property rights as guaranteed in Article 1 of Protocol No. 1 to the Convention. The relevant Article reads as follows:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A. Admissibility

1. *The parties’ submissions*

56. The Government submitted that the applicants had failed to exhaust all effective legal remedies. In particular, they should have made use of a civil

compensation claim against the State under the Restitution Act (see paragraph 42 above), as the restitution order could not be enforced in its entirety owing to legal and practical obstacles. The Government referred to the domestic practice they submitted. They maintained that even though none of the judgments in question referred to a restitution order that had been quashed as in the present case (see paragraph 53 above), a claim of this kind was nonetheless an effective remedy within the meaning of Article 35 of the Convention. Notwithstanding the legally prescribed time-limit for its utilisation (see paragraph 46 above), the “window of opportunity” for the applicants to use the remedy in question had been sufficiently long. Thus, instead of addressing their claims against the S. and F. companies, the applicants should have lodged a civil compensation action against the State under the Restitution Act. The applicants had failed to submit domestic case-law to support their claims of the alleged ineffectiveness of the civil proceedings. Mere doubts as to the effectiveness of the remedy in question did not excuse them for having failed to make use of it.

57. The Government in their additional observations also submitted that the applicants had failed to seek compensation in the restitution proceedings for the land that had not been returned. By seeking only restitution of the land, without allowing the authorities the possibility of considering any of the other alternatives provided for in section 27 of the Restitution Act, the applicants had failed to make use of yet another remedy. Lastly, by claiming compensation for the land that had not been returned in their claim for just satisfaction before the Court, the applicants had implicitly recognised that a compensation claim was an effective remedy for their grievance.

58. The applicants submitted that section 51 of the Restitution Act provided for the possibility of compensation proceedings in the civil courts for claimants who, unlike them, had failed to submit their restitution claim to the administrative authorities in time. Furthermore, they had submitted their restitution claim in accordance with section 8 of the Restitution Act (see paragraph 35 above), which did not provide for an option to choose to be compensated in a different way. Nor had they been obliged to bring civil proceedings in addition to the other steps they had taken, and in fact they did not consider that they had been eligible to do so. The domestic practice submitted by the Government was not relevant to their case. The aim of the civil proceedings they had brought against the companies had been to protect their property rights in respect of the plots in question when, in 2004, the Supreme Court had quashed the Appeal Commission’s first decision declaring the 2002 restitution order null and void (see paragraph 22 above).

2. *The Court’s assessment*

59. The general principles regarding the exhaustion of domestic remedies under Article 35 § 1 of the Convention are set out in, for example, *Vučković and Others v. Serbia* ((preliminary objection) [GC], nos. 17153/11 and 29

others, §§ 70-77, 25 March 2014, with further references). In particular, the Court must examine whether, in the circumstances of the case, the applicant did everything that could reasonably be expected of him or her to exhaust domestic remedies (see *Jasar v. the former Yugoslav Republic of Macedonia* (dec.), no. 69908/01, 19 January and 11 April 2006). In the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose, for the purpose of fulfilling the requirement of exhaustion of domestic remedies, a remedy which addresses his or her essential grievance. In other words, when one remedy has been pursued, the use of another remedy which has essentially the same objective is not required (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

60. Turning to the present case, the Court notes that a civil compensation claim under the Restitution Act was, in principle, available to the applicants (see paragraphs 42 and 46 above). However, at that point they had already obtained a final restitution order in their favour, and the extraordinary restitution proceedings, which had been initiated thereafter and were still ongoing, also ended in favour of the applicants in March 2008 (see paragraphs 16 and 20-27 above). It was only in October 2015 that the applicants' restitution order of 2002 was declared in part null and void, specifically during the restitution proceedings which had been resumed, at their request, in order to obtain administrative enforcement of the order (see paragraph 29 above). The Court considers that it would be unduly formalistic to require the applicants to avail themselves of yet another remedy, and in particular a remedy that had been available only within a certain period (see paragraph 46 above) and that had ceased to exist while the restitution proceedings were ongoing.

61. It also observes that a compensation claim as provided for in section 51 (later section 49) of the Restitution Act (see paragraphs 42 and 46 above), to which the Government referred, related in fact to situations when a restitution claim could no longer be submitted owing to the expiry of the five-year time-limit from the day of the entry into force of the Restitution Act, which was not the applicants' case. Moreover, the Court notes that the domestic case law referenced by the Government does not correspond to the applicants' situation (see paragraph 54 above). Notably, part of it refers to situations in which it had no longer been possible for the previous owners to submit their restitution claims to the administrative authorities and, therefore, they had availed themselves of the opportunity to lodge a civil claim in accordance with the Restitution Act (see paragraphs 42 and 46 above). Another part of the domestic case law submitted relates to a situation in which the Restitution Commission had, by mistake, returned the disputed property to other persons who had also initiated restitution proceedings. In this connection, it is to be noted that no such mistake was established in the applicants' case.

62. As to the Government's objection that the applicants had failed to claim compensation in respect of the land that had not been returned to them within the restitution proceedings, the Court finds that the Government are estopped from relying on those grounds, which were not raised in their initial non-exhaustion plea (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 52, 15 December 2016).

63. Having regard to the applicants' restitution claim and the manner in which they formulated their claim before the Court, the Court is satisfied that they took reasonable steps to bring their complaints to the attention of the authorities and to obtain redress. The Court finds, therefore, that the applicants were exempted from the requirement to make use of the remedy referred to by the Government. Accordingly, the Government's objection must be dismissed.

64. The Court notes that the applications are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

65. The applicants, referring to *Stojanovski and Others* (cited above), submitted that the authorities had interfered with their property interests in breach of the principle of lawfulness, in a manner incompatible with the right to the peaceful enjoyment of their possessions.

66. The applicants only alleged a violation of their property rights in respect of the plots on which the petrol station and the business premises had been built by private companies; they submitted that those structures were not of public interest. When the Restitution Act had come into force and when the restitution claim had been submitted, the plot had been considered undeveloped building land, as established by the report of 22 February 2002. All subsequent actions by the authorities had been irrelevant, in particular the on-site inspection of 12 March 2010 (see paragraph 29 above), which had been conducted eight years after the 2002 restitution order had become final. Thus, the quashing of the restitution order despite all the previous decisions adopted in their favour had imposed an excessive burden on them.

(b) The Government

67. The Government acknowledged that the quashing of the 2002 restitution order had amounted to an interference with the applicants' legitimate expectation under Article 1 of Protocol No. 1. However, it had been initiated by the Solicitor General in order to protect public and State property interests. Moreover, the restitution order had been quashed owing to its

unenforceability, on a valid statutory basis under section 267(1)(3) of the Administrative Proceedings Act (see paragraphs 29 and 49 above), and had been supported by relevant and sufficient reasons.

68. Relying on *Vikentijevik* (cited above), the Government maintained that the quashing of the order had been aimed at protecting the rights and interests of third parties – the two companies that had built structures on the basis of valid documents and in fulfilment of all statutory criteria, including payment of fees and taxes to the relevant authorities. Lastly, a fair balance had been struck between the competing interests. Quashing the order had been the only available way to correct the Restitution Commission’s fundamental error of ordering the restitution of a property which could not be returned and to remedy the consequences of that order for the public interest and the proprietary rights of third parties. The applicants had not been subjected to an excessive burden as they could have challenged the measure complained of effectively by claiming remedies in the restitution proceedings and/or by claiming alternative means of redress in those proceedings (see paragraph 57 above) or by bringing a compensation claim against the State in civil proceedings. The Government submitted that the authorities issuing the construction permits or taking related actions could not have been aware that the land in question, which was being used lawfully, would eventually become the subject of a restitution order. They had thus acted in good faith.

2. *The Court’s assessment*

(a) **General principles**

69. The relevant principles regarding Article 1 of Protocol No. 1 to the Convention have been summarised in *Iatridis v. Greece* ([GC], no. 31107/96, § 58, ECHR 1999-II); *Kopecký v. Slovakia* ([GC], no. 44912/98, § 35, ECHR 2004-IX); *Lenskaya v. Russia* (no. 28730/03, § 45, 29 January 2009); *Moskal v. Poland* (no. 10373/05, §§ 49-52, 15 September 2009); and *Lelas v. Croatia* (no. 55555/08, § 76, 20 May 2010, with further references).

(b) **Application of the principles to the present case**

70. The Court affirms at the outset that it will confine its examination to the complaint as formulated by the applicants, which is limited to the quashing of the order only in respect of the land which had not been returned to them because of the private business premises that had been built on it. They did not complain in respect of the land which had not been returned because there was a structure of public interest, namely a public street, on it.

71. The Court notes that the 2002 restitution order conferred on the applicants title to part of the plots expropriated from their late predecessors (see paragraph 16 above). The applicants’ title was then registered with the Land Registry. The mere fact that the applicants’ property rights were later revoked does not prevent them from having a “possession” within the

meaning of Article 1 of Protocol No. 1 (see *Beyeler v. Italy* [GC], no. 33202/96, § 105, ECHR 2000-I). The Government acknowledged that the quashing of the restitution order amounted to an interference. The Court sees no reason to find otherwise. It must therefore be ascertained whether the interference complained of was lawful and, if so, whether it was proportionate to the legitimate aim pursued.

72. In that connection, the Court reiterates that the principle of lawfulness not only presupposes that the applicable provisions of domestic law are sufficiently accessible, precise and foreseeable in their application but also requires the Court to verify whether the way in which the domestic law is interpreted and applied by the domestic courts produces consequences that are consistent with the principles of the Convention (see *Lelas*, cited above, § 76).

73. Turning to the present case, the Court observes that, while it is true that the private buildings had been already built when the administrative enforcement proceedings were initiated, the domestic law specifies that in restitution proceedings what matters is the situation of the land on the date when a restitution claim is submitted (see paragraphs 38-39 above; see also *Stojanovski and Others*, cited above, § 55). According to the established facts, the land in question was undeveloped when the applicants submitted their claim (see paragraph 14 above). The mere existence of a building permit prior to the restitution claim is irrelevant for the proprietary entitlement to ownership specified under the Restitution Act (*ibid.*, § 57). On 12 December 2005 the plenary session of the Supreme Court held that preparatory construction work did not mean that the land had been developed within the meaning of the Building Act. Accordingly, as stated by the Administrative Court in the extraordinary proceedings after the 2002 restitution order became final, all subsequent construction work on those plots of land was carried out contrary to section 72 of the Restitution Act (see paragraph 27 above). Moreover, in accordance with the provisions of the Restitution Act, the findings of the Supreme Court (see paragraphs 22, 24 and 25 above) and the opinion of the Constitutional Court (see paragraph 52 above), a property subject to a restitution order cannot be disposed of after the entry into force of that Act (see paragraph 45 above). Lastly, it is important to note that in the extraordinary proceedings, the Administrative Court explicitly held that the order could not be declared null and void on the grounds of its unenforceability and that the state of the land on the date when the Restitution Act had come into force had been the relevant criterion for the restitution of the plots in question (see paragraph 27 above).

74. However, notwithstanding the above findings, the Court notes that an alteration in the application of the domestic law took place in the course of the proceedings for the administrative enforcement of the restitution order. Despite the Government's claim to the contrary (see paragraph 67 above), the 2002 restitution order was declared null and void in part by the Restitution

Commission *proprio motu*, in the proceedings for administrative enforcement in 2014 – twelve years after it was first issued – on the grounds of its legal and factual unenforceability (owing to the private structures having been built there in the meantime). The Court further notes that an on-site inspection carried out eight years after the submission of the restitution claim served as the basis for the quashing of the order (see paragraphs 29 and 30 above). Such a conclusion, however, ran counter to several judgments of the administrative courts and the Supreme Court in the case (see *Stojanovski and Others*, cited above, § 52) and was not foreseeable for the applicants, who could have reasonably expected that in the proceedings for administrative enforcement they would finally have their land returned to them. In this connection the Court cannot but note that the High Administrative Court in its decision of 21 October 2015 disregarded its previous reasoning on the matter without explaining its reasons for doing so (see paragraphs 29 and 30 above). The Court reiterates that its well-established case-law imposes a duty on the authorities to make a more substantial statement of reasons justifying such a departure from a previous ruling (see *Atanasovski v. the former Yugoslav Republic of Macedonia*, no. 36815/03, § 38, 14 January 2010).

75. It also cannot be overlooked that the applicants made a number of attempts, including some before they lodged the restitution claim, to prevent the construction of the business premises on the land that was to be the subject of the restitution proceedings (see paragraph 31 above). Therefore, the authorities could not claim to have been unaware of the ongoing construction on the land. The authorities' inactivity allowed the construction of the two private structures, owned by the private companies F. and S., despite the fact that there were ongoing restitution proceedings in respect of the land in question and that under the Restitution Act, it therefore should not have been disposed of, as had been clearly established by the Supreme Court (see paragraph 22 above). Those companies only had the right to use the disputed plots, which had been transferred to them by G.D. on the basis of an agreement of 7 November 2002, certified by a notary public on 10 December 2002 and 15 February 2003, that is to say, after the 2002 restitution order. It is further to be noted that G.D.'s right to use the land in question was subsequently revoked (see paragraphs 10-20 above). In that connection, the Constitutional Court emphasised that the aim of the Restitution Act was to protect the interests of previous owners and their successors, and to protect property that had been confiscated by the State, rather than the interests of the user of the property. It further noted that the right of third parties to use the land could not compete with the property rights of the previous owners, which enjoyed constitutional protection (see paragraph 52 above). In that connection, the Restitution Act provided for the opportunity for the interested third parties F. and S. to safeguard their rights if the disputed plots had been returned to the applicants (see paragraph 44 above). That was also confirmed by the domestic courts, which emphasised that any unresolved issues between

third parties and the owners of the returned plots, such as those arising in the present case, should be resolved in accordance with the Property Act (see paragraph 22 above). Thus, the fact that the authorities allowed the business premises to be constructed contrary to the Restitution Act (see paragraph 45 above) could not be taken to the detriment of the applicants.

76. The present case contrasts with *Vikentijevik* (cited above), in which the quashing of a restitution order was justified because of fundamental defects in the Restitution Commission's decision which rendered the restitution order legally unenforceable. The errors cited by the Commission and the Supreme Court in the above-mentioned case concerned the following: (1) the applicant in that case had obtained possession of an entire immovable property and preference shares in a company despite the fact that the company had been in the joint ownership of four individuals, one of whom had been the applicant's late predecessor; (2) the buildings that had been returned to the applicant had been larger than those confiscated, in terms both of their size and of their value; and (3) there had been development on the land which had been returned to him on the basis of the restitution order (see *Vikentijevik*, cited above, § 65).

77. To conclude, the quashing of the final 2002 restitution order in the present case as a result of the proceedings that were initiated for administrative enforcement frustrated the applicants' reliance on a binding decision and deprived them of an opportunity to gain possession of the property that they had legitimately expected to receive (see, *mutatis mutandis*, *Kot v. Russia*, no. 20887/03, § 33, 18 January 2007).

78. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicants' property interests was in breach of the principle of lawfulness and could not be considered foreseeable in accordance with the Convention principles. It is accordingly incompatible with the applicants' right to the peaceful enjoyment of their possessions. This finding makes it unnecessary to examine whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

79. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

80. 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

81. The applicants claimed 1,273,313 euros (EUR) in respect of pecuniary damage, which corresponded to the market value of the land in respect of which the restitution order had been quashed. They also claimed EUR 15,000 each in respect of non-pecuniary damage.

82. The Government submitted that the question of pecuniary damage was not ready for decision. They further argued that as the restitution of the land was not possible, the applicants should be awarded monetary compensation in accordance with the Regulations on the Manner and Procedure of Establishing the Value of Property subject to Restitution (*Уредба за начинот и постапката за утврдување на вредноста на имотот кој е предмет на денационализација*, Official Gazette, nos. 43/2000 and 19/2001). They also contested the applicants' claim in respect of non-pecuniary damage.

83. Given the circumstances of the case, the Court considers that the question of pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court). Accordingly, the Court reserves this question and invites the Government and the applicants to submit, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the amount to be awarded to the applicants in respect of pecuniary damage and, in particular, to notify the Court of any agreement that they may reach (see *Stojanovski and Others*, cited above, 69).

84. However, the Court awards the applicants EUR 3,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

85. The applicants also claimed EUR 31,115 in respect of costs and expenses incurred before the domestic courts and other relevant institutions. They also claimed EUR 436 for postal costs incurred before the Court and EUR 297 for the cost of photocopying documents.

86. The Government submitted that the claim for the costs and expenses incurred in the civil proceedings that the applicants initiated against F. and S. should be rejected as unnecessary. They further argued that part of the costs and expenses incurred before the administrative bodies and courts should be awarded to the applicants, but they did not specify which part. They maintained that the postal expenses should be rejected as excessive.

87. 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

(see *Strezovski and Others v. North Macedonia*, nos. 14460/16 and 7 others, § 100, 27 February 2020). In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants jointly the sum of EUR 285 in respect of the postal costs for which they provided payment receipts. The Court rejects the rest of the applicants' claim in this regard.

C. Default interest

88. 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. *Decides*, to join the applications;
2. *Declares*, the applications admissible;
3. *Holds*, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
4. *Holds*,
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 3,000 (three thousand euros) to each of the applicants, plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 285 (two hundred and eighty-five euros) to the applicants jointly, plus any tax that may be chargeable to them, 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;
5. *Holds*, that the question of pecuniary damage under Article 41 of the Convention is not ready for decision, and accordingly,
 - (a) reserves the said question in whole;

- (b) invites the Government and the applicants to submit, within three 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.

6. *Dismisses*, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 12 December 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence
1.	31620/15	Naskov and Others v. North Macedonia	24/06/2015	Jordan NASKOV 1938 Skopje Cvetan NASKOV 1950 Skopje
2.	34859/15	Naskov and Others v. North Macedonia	15/07/2015	Slobodan NASKOV 1952 Skopje Danica KISELOSKA 1941 Skopje
3.	14659/16	Naskov and Others v. North Macedonia	08/03/2016	Zvezda MAKAROVSKA 1947 Skopje Tomislav NASKOV 1939 Skopje Koce NASKOV 1943 Skopje Lazar NASKOV 1949 Skopje Nada DIMOVA 1937 Skopje Vancho NASKOV 1972 Skopje