

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

FOURTH SECTION

DECISION

Application no. 39852/14
Salih Halilov BEKTASHEV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 25 January 2022 as a Committee composed of:

Armen Harutyunyan, *President,*
Jolien Schukking,
Ana Maria Guerra Martins, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 39852/14) 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") on 20 May 2014 by a Bulgarian national, Mr Salih Halilov Bektashev, born in 1944 ("the applicant"); the applicant died in 2015 and his son, Mr Kemal Salihov Bektashev, expressed the wish to continue the proceedings in his stead; Mr Kemal Salihov Bektashev was represented before the Court by Ms I. Ivanova, a lawyer practicing in Sofia;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms B. Simeonova, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant's father owned agricultural land which was collectivised in the 1950s. After the enactment of the Agricultural Land Act in 1991, the applicant applied for restitution. The entitlement of the applicant and the other heirs of his father to the restitution of two plots of land totalling 10,000 square metres was recognised in two decisions given by the competent authorities in 1999 and 2002.

2. In a decision of 21 January 2009 a competent body in Velingrad ordered the restitution in kind ("in the old boundaries") of land totalling 3,511 square metres. That decision, indicating the specifications of the plots and accompanied by the requisite cadastral plans, has entered into force.

3. In the years that followed, the applicant petitioned different State bodies on numerous occasions seeking the restitution in kind of all 10,000 square metres of land. Those bodies responded that the available land in the area was insufficient to satisfy the claims of all former owners because parts of the land initially recognised as being subject to restitution had turned out to be the property of third parties not participating in the restitution process, had been submerged by the waters of an artificial lake or had always been State property and thus not subject to restitution. On some occasions the applicant was advised to seek compensation in lieu of restitution in kind.

4. The applicant complained under Article 1 of Protocol No. 1 and Article 13 of the Convention that the domestic authorities had failed to complete the restitution procedure within a reasonable time. In 2020 the applicant's son made additional submissions, stating that the procedure remained pending and contesting the authorities' position that no further land was available for restitution in kind in the area.

THE COURT'S ASSESSMENT

5. In decisions of 1999 and 2002 the competent authorities recognised the entitlement of the heirs of the applicant's father to the restitution of 10,000 square metres of land. These "recognition" decisions did not give rise to any title to property and represented an initial stage in the restitution procedure, to be followed, in principle, by further procedural steps (see, for a general description of the procedure and the different types of decisions that may be taken, *Zikatanova and Others v. Bulgaria*, no. 45806/11, §§ 54-57, 12 December 2019).

6. One such subsequent step taken in respect of the applicant was the adoption of the decision of 21 January 2009 – a "restoration" decision, which was accompanied by the requisite cadastral plans, and thus constituted valid title to property and was considered under domestic law to be equivalent to a notarial deed (ibid., § 55).

7. The applicant's son argued that the above-mentioned decision had remained unenforced. However, he did not respond to the explanations given by the Government that no further action was required on the part of the authorities with a view to "enforcement". The decision of 21 January 2009 effectively gave rise to title to property in favour of the heirs of the applicant's father, and the technical steps which, according to the Government, remained to be completed – tracing the borders of the respective plots, if necessary (seeing that the restitution of the plots corresponded to their

pre-collectivisation borders), and formally taking possession of the plots – were to be taken upon a specific request by the owners.

8. Thus, the decision of 21 January 2009, being a final decision which gave rise to title to property and needed to be complemented by merely technical steps, effectively put an end to the restitution procedure concerning 3,511 square metres of the land claimed by the applicant. Seeing that the present application was lodged in 2014, this part of it was thus submitted more than six months after the decision in question. Accordingly, this part of the application has been submitted out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

9. As concerns the remainder of the application, it is once again to be noted that the decisions of 1999 and 2002 were "recognition" decisions acknowledging the entitlement of the heirs of the applicant's father to restitution. They did not determine the manner in which the restitution procedure was to be completed, whether through restitution in kind or compensation (see *Zikatanova and Others*, cited above, §§ 94-95). At the time of the parties' submissions (the Government's observations on admissibility and merits were received in May 2021 and the observations of the applicant's son in July 2021), that issue had not yet been determined.

10. In the years after the decision of 21 January 2009 ordering partial restitution in kind, the applicant petitioned different State bodies, insisting on that form of restitution in respect of all the land mentioned in the earlier decisions of 1999 and 2002. It appears that he has never accepted or showed interest in the possibility of receiving compensation in lieu of restitution in kind and, in so far as it was for him to take any action before the domestic authorities to seek such compensation, he has taken no such action. In his application to the Court the applicant complained generally of the duration of the restitution procedure, asserting that restitution in kind remained possible and was due to him. Neither he nor his son, who is currently pursuing the proceedings before the Court in his father's stead, have in any subsequent submissions discussed the possibility of compensation or the reasons for any delay in that regard.

11. In view of the above, there is no reason to consider that the complaints before the Court, which were phrased in general terms, concerned any delay on the part of the authorities in providing compensation in lieu of restitution in kind, that is, that they related to the authorities' failure, over a lengthy period, to complete the restitution procedure in any way possible (contrast *Zikatanova and Others*, cited above, § 112). On the contrary, the applicant complained solely about the authorities' prolonged refusal to order the restitution in kind of all 10,000 square metres of land indicated in the initial "recognition" decisions.

12. However, as already mentioned, those decisions did not guarantee restitution in kind, leaving to a later stage the determination of whether such

restitution or compensation in lieu thereof was due. No such determination has yet been made.

13. Accordingly, no "legitimate expectation" has ever arisen for the applicant to obtain specifically the restitution in kind of the land not covered by the decision of 21 January 2009. He did not therefore have "possessions" in that regard requiring the protection of Article 1 of Protocol No. 1 (see *Zikatanova and Others*, cited above, § 99, and *Popov and Chonin v. Bulgaria*, no. 36094/08, § 39, 17 February 2015).

14. The part of the application concerning the land not subject to the decision of 21 January 2009 is thus incompatible *ratione materiae* with the provisions of the Convention and the Protocols thereto within the meaning of Article 35 § 3 (a), and must be rejected in accordance with Article 35 § 4.

15. Lastly, in view of its findings above, the Court also finds that the applicant had no arguable claim under Article 13 of the Convention, and that that provision is likewise inapplicable.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 February 2022.

Ilse Freiwirth Deputy Registrar	Armen Harutyunyan President