

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

THIRD SECTION

CASE OF ANTONOV v. BULGARIA

(Application no. 37520/21)

JUDGMENT

STRASBOURG

5 November 2024

This judgment is final but it may be subject to editorial revision.



In the case of Antonov v. Bulgaria,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Georgios A. Serghides*, President*,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 37520/21) 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 15 July 2021 by a Bulgarian national, Mr Aleksandar Dimitrov Antonov ("the applicant"), who was born in 1946, lives in Sofia and was represented by Ms M. Petrova, a lawyer practising in Sofia;

the decision to give notice of the complaint concerning the amount of compensation for the applicant's expropriated property to the Bulgarian Government ("the Government"), represented by their Agent, Ms M. Tsocheva from the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 8 October 2024,

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

SUBJECT MATTER OF THE CASE

1. The case is of the type examined in *Kostov and Others v. Bulgaria* (nos. 66581/12 and 25054/15, 14 May 2020) and concerns the adequacy of compensation for expropriation under the State Property Act.

2. In 2020 a plot of land of the applicant in the town of Slivnitsa measuring 2,803 square metres was expropriated with a view to the construction of a railway. The compensation for the applicant was set at 5,118 Bulgarian levs (BGN), equivalent of 2,616.79 euros (EUR), or BGN 1.83 (EUR 0.93) per square metre. It was based on the prices paid in thirteen transactions with agricultural land in the area, concluded in the period preceding the expropriation. The final judgment in the expropriation proceedings was given on 25 January 2021 by the Sofia Region Administrative Court.

3. The applicant complained under Article 1 of Protocol No. 1 and Article 13 of the Convention that he had been deprived of his property without fair compensation. He contended that the real market value of his land had been much higher.

THE COURT'S ASSESSMENT

4. The complaint falls to be examined under Article 1 of Protocol No. 1 (see *Kostov and Others*, cited above, §§ 94-96, and *Hristova and Others v. Bulgaria* [Committee], no. 56681/15, § 6, 5 September 2023).

5. The application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

6. The relevant domestic law and practice and the criteria concerning the adequacy of compensation for expropriation under the State Property Act have been described in *Kostov and Others* (cited above). In particular, the Court reiterated that the taking of property without payment of an amount reasonably related to its value would normally constitute a disproportionate interference, and that the amount of compensation had to be calculated on the basis of the value of the property at the date on which ownership of it was lost (ibid., §§ 62-63).

7. In the individual cases examined in *Kostov and Others* (cited above, §§ 81-87 and 91), as well as in some of the follow-up cases (see, for example, *Bozhilov and Others v. Bulgaria* [Committee], no. 56383/15, §§ 11-13, 5 September 2023, and *Nevada Tours 2004 AD and Bulgarian Tourist Company Global Tours AD v. Bulgaria* [Committee], nos. 4173/20 and 6186/20, §§ 11-16, 10 September 2024), the Court found a violation of Article 1 of Protocol No. 1. It noted the amount of compensation awarded to the applicants in accordance with the rules of the State Property Act (see, for a summary of these rules, *Kostov and Others*, cited above, §§ 25-26), but saw serious indications that the market value of the applicants' land was likely to have been much higher. It concluded that the respondent State had not thus shown that the compensation awarded at the domestic level had met the requirement of being reasonably related to the actual value of the applicants' land.

8. The Court therefore has to assess in the present case, on the basis of the facts submitted by the parties, whether there are sufficient indicators that the actual value of the applicant's land could have been significantly higher than the compensation awarded at the domestic level.

9. As noted, that compensation was equivalent to BGN 1.83 (EUR 0.93) per square metre (see paragraph 2 above). With regard to it, the Court makes the following observations.

10. The parties disagreed on the status of the applicant's land which, as mentioned (ibid.), had been compared to plots of agricultural land in the expropriation procedure. However, the applicant considered it constructible, on the ground that in 2008 he had obtained an initial decision of the municipal authorities as to its transformation. He had never undertaken construction works, nor was however the land being used for agriculture. The question of the land's formal status was discussed by the Sofia Region Administrative

Court, which concluded that the procedure for the amendment of that status had not been finalised, meaning that the land had formally remained agricultural.

11. The applicant also referred to the fact that another plot of land expropriated in the same procedure had been valued for the purposes of the expropriation at about BGN 32 (EUR 16.3) per square metre. That plot and the applicant's land had been situated in proximity, on the same street, between a residential area, an industrial zone, and a highway, in an area considered part of the urban territory. The other plot had had its formal status amended and had been developed. The applicant considered the different treatment of the two plots on that ground alone unjustified, and the difference between the values set – EUR 0.93 per square metre for his land versus EUR 16.3 for the other plot – exorbitant. The Government, for their part, objected against the comparison between the two plots, considering it inappropriate and misleading.

12. The Court takes note of the parties' arguments. It sees no reason to question the domestic court's conclusion that the applicant's land was, formally viewed, agricultural at the time of expropriation. However, it does not consider decisive how the land was labelled in the domestic procedures, as what mattes for it is the land's actual value (see *Bozhilov and Others*, § 12, and *Nevada Tours 2004 AD and Bulgarian Tourist Company Global Tours AD*, § 14, both cited above). In this regard, the Court is not convinced that the treatment of the applicant's land as purely agricultural and equivalent to any other plot of agricultural land in the region was appropriate. It is evident from the facts of the case, namely the municipality's initial agreement to the plot's development, the plot's location between a residential area, an industrial zone and a highway, and the fact that a plot situated in the same zone had already been developed (see paragraphs 10-11 above), that the applicant's land had a potential beyond mere agricultural use. No account was taken of this aspect when setting the compensation at the domestic level.

13. In addition, in so far as the Government argued that the compensation at the domestic level was calculated in accordance with the requirements of the State Property Act, the Court has no reason to doubt that this was so. Furthermore, it has previously held that the approach under the national law could not be seen as incapable *a priori* of leading to the determination of adequate compensation (see *Kostov and Others*, cited above, § 80). However, the fact remains that in the case at hand the lack of flexibility of the domestic legislation and the failure of the domestic authorities to take sufficient account of the individual characteristics of the applicant's land led to what the Court sees as a problematic result.

14. In view of the above, the Court concludes that the compensation awarded to the applicant was not shown to be reasonably related to his land's value, which means that the requirements of Article 1 of Protocol No. 1 have

not been met, and that the deprivations of the applicant of his property was a disproportionate measure.

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. In respect of pecuniary damage, the applicant claimed the actual value of his land, which in his view was equivalent to 16.3 euros (EUR) per square metre, namely the level of compensation paid for the plot on the same street (see paragraph 11 above). The applicant also claimed non-pecuniary damage "in the maximum amount". He did not seek the reimbursement of any costs and expenses.

17. The Government contested the claims.

18. In a case such as the present one the Court is to make an award which is, as far as possible, "reasonably related" to the market value of the expropriated land at the time the applicant lost ownership thereof (see *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], no. 71243/01, § 36, ECHR 2014, and *Kostov and Others*, cited above, § 102).

19. However, the Court is unable in the case at hand to determine precisely such a value. It is not satisfied that the value set for another plot is, as claimed by the applicant, also the definitely established value of his own plot.

20. Consequently, as in *Kostov and Others* (cited above, § 105), the Court is of the view that the most appropriate means to remedy the violation would be to reopen the proceedings at the domestic level and re-examine the question of compensation in compliance with the requirements of Article 1 of Protocol No. 1. Domestic law provides for such a possibility (ibid., § 104).

21. The Court thus dismisses the applicant's claim for pecuniary damage.

22. As to non-pecuniary damage, the Court awards the applicant EUR 3,000, plus any tax that may be chargeable.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*

   (a) that the respondent State is to pay the applicant, within three months, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 November 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georgios A. Serghides President