

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

FOURTH SECTION

CASE OF HADZHIGEORGIEVI v. BULGARIA

(Application no. 41064/05)

JUDGMENT
(Just satisfaction)

STRASBOURG

13 January 2015

FINAL

13/04/2015

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



In the case of Hadzhigeorgievi v. Bulgaria,

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

Ineta Ziemele, *President*,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Zdravka Kalaydjieva,
Paul Mahoney,
Faris Vehabović, *judges*,
and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 2 December 2014,

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

PROCEDURE

1. The case originated in an application (no. 41064/05) 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 two Bulgarian nationals, Mr Yanko Krumov Hadzhigeorgiev and Mr Dimitar Krumov Hadzhigeorgiev ("the applicants"), on 27 October 2005.

2. The applicants were represented by Mr I. Gruykin, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms V. Hristova, of the Ministry of Justice.

3. In a judgment delivered on 16 July 2013 ("the principal judgment"), the Court found a violation of Article 1 of Protocol No. 1. In particular, it held that the authorities' failure, for many years, to enforce a final court judgment allowing the applicants' claims for the restitution of a plot of forest land formerly owned by their ancestors, as a result of opposition to that judgment on the part of an administrative body, was incompatible with the principles of lawfulness and legal certainty (see *Hadzhigeorgievi v. Bulgaria*, no. 41064/05, §§ 61-72, 16 July 2013).

4. Under Article 41 of the Convention, the Court noted that the most appropriate reparation would be full compliance with the court judgment satisfying the applicants' restitution claims, namely completion of the restitution process and actual delivery of the land at issue to the applicants in accordance with their inheritance shares (see the principal judgment, § 77). Consequently, the Court concluded that the question of the application of Article 41, as regards pecuniary and non-pecuniary damage, was not ready for decision. It reserved that question and invited the Government and the applicants to submit, within four months of the

principal judgment's entry into force, their written observations on the matter and in particular to notify the Court of any agreement they might reach (ibid., § 78, and point 4 of the operative provisions).

5. In a letter of 12 February 2014 the Government informed the Court that the parties had met for negotiations and had agreed that the land at issue would be transferred to the applicants and the remaining heirs of their ancestors. The tracing of the property's borders, necessary for the formal transfer of possession, had started on 31 January 2014 but had been interrupted due to the winter weather and had been rescheduled for the spring.

6. In another letter dated 14 February 2014 the Government submitted documents concerning the case.

7. The applicants wrote to the Court on 13 February 2014. They considered that the State did not have any genuine intention of returning their land to them and that the authorities were merely "imitating activity". The applicants pointed out in particular that the act registering their plot as State property, issued by the regional governor of Blagoevgrad on 4 November 2003 (see the principal judgment, § 23), remained in force. They considered that this registration of their plot as State-owned would block their use and disposal of it, and argued that the annulment of that registration was a "precondition for the actual restitution of the plot". They had been advised by the competent Agriculture Department that, as provided by domestic law, it had been up to them to initiate the procedure for such annulment; however, the applicants insisted that the State should have done this of its own motion. Moreover, the applicants pointed out that they had not been given the documents requested by them "certifying the plot's actual state and the changes which have occurred".

8. On the basis of the above, the applicants reiterated their claims for pecuniary and non-pecuniary damage, as made before the adoption of the principal judgment (see § 74 of that judgment and paragraphs 12-14 below).

9. In a new letter of 24 April 2014 the applicants commented on the Government's submissions of 12 February 2014. They pointed out that the authorities were yet to take action to comply with the principal judgment.

10. On 12 June 2014 the Government informed the Court that the tracing of the property's borders had been completed on 26 May 2014, in the presence of heirs of the applicants' ancestors, including the second applicant. The Government presented an official record of the procedure, prepared by the Yakoruda Agriculture Department and signed by the participants. The tracing of the borders meant that the applicants and their ancestors' remaining heirs had entered into possession of the plot. The applicants did not comment on the information thus presented by the Government.

THE LAW

11. 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

1. The applicants' claims

12. The applicants claimed, in the first place, 4,514,355 Bulgarian levs (BGN), the equivalent of 2,308,153 euros (EUR), for the market value of the plot.

13. They claimed another BGN 528,000, the equivalent of EUR 269,962, for lost profit for not being able to use the land from 2000 to 2011. Before the adoption of the principal judgment, they had presented in support of that claim an expert report from 2005, prepared for unspecified domestic proceedings, which stated that the possible revenue from the sale of timber for the period between 2000 and 2004 would have been BGN 48,000, the equivalent of EUR 24,490. In the procedure under Article 41 of the Convention the applicants additionally submitted in support of the claim an information document drawn up by an unspecified State body, showing that the timber actually produced from the plot between 2000 and 2014 was evaluated, on the basis of prices as of the beginning of 2014, at BGN 61,779.41 (the equivalent of EUR 31,680); however, the applicants argued that the potential production could have been higher.

14. The applicants also claimed EUR 5,000 each for non-pecuniary damage.

15. In the proceedings under Article 41 of the Convention the Government did not comment on these claims.

2. The Court's assessment

(a) Pecuniary damage

16. The applicants claimed, in the first place, the market value of the plot due to them, namely EUR 2,308,153 (see paragraph 12 above).

17. However, the Court notes that in May 2014 the plot was returned to the applicants and to their ancestors' remaining heirs, as they recovered possession of it (see paragraph 10 above). This effectively put an end to the restitution procedure and the applicants are now the owners of their respective shares in the plot. The Court is not convinced that, as argued by the applicants (see paragraph 7 above), the fact that in 2003 their plot was

registered as State-owned would impede the effective exercise of their property rights. In the principal judgment (see § 58 thereof) the Court noted that it had not been shown that the act of registration had any effect on the rights acquired by the applicants. The Court observes in addition that it remains open for the applicants to seek the act's invalidation and that there appear to be no obstacles against such a request on their part being allowed.

18. Accordingly, the Court sees no reason in the present case to make an award in respect of the market value of the plot.

19. The applicants further claimed EUR 269,962 for lost earnings, on the ground that they had been unable to profit from the use of their land between 2000 and 2011 (see paragraph 13 above). Having regard to the violation found in the principal judgment (see paragraph 3 above), the Court is of the view that there is a causal link between that violation and the damage claimed under the present head. However, it considers the amount claimed exaggerated. It notes, first, that the 2005 expert report relied on by the applicants in support of their claim (see paragraph 13 above) showed that the possible revenue from the sale of timber produced from the plot for a period of four years, namely between 2000 and 2004, would have been EUR 24,490, that is about EUR 6,120 per year. The Court also refers to the information document submitted by the applicants showing that the timber actually produced from their plot between 2000 and 2014 was evaluated at EUR 31,680 (ibid.). In addition, the Court notes that the above calculations concern the whole plot, whereas the applicants are entitled to a share of 37.5% (see the principal judgment, § 7, which specifies the share of all three initial applicants; in respect of one of them, the Court struck the application out of its list of cases).

20. In view of the above, the Court considers it appropriate to award, jointly to the two applicants, EUR 8,000 under this head, plus any tax that may be chargeable.

(b) Non-pecuniary damage

21. The Court is of the view that the breach of Article 1 of Protocol No. 1 must also have caused the applicants non-pecuniary damage, arising out of the feeling of helplessness and frustration in the face of the prolonged failure of the authorities to put into effect the final judgment in their favour. However, the Court considers the amounts claimed by the applicants under this head, namely EUR 5,000 for each of them (see paragraph 14 above), exaggerated. It considers it appropriate to award each of them EUR 1,000, plus any tax that may be chargeable.

B. Other measures

22. In addition, referring to its finding in paragraphs 50-52 of the principal judgment that no domestic remedies were available enabling the

applicants in the present case to compel the authorities to comply with the final court judgment in their favour, the Court wishes to reiterate its position as expressed in the similar case of *Mutishev and Others* (see *Mutishev and Others v. Bulgaria* (just satisfaction), no. 18967/03, § 38, 28 February 2012) that the general measures to be taken in the execution of its judgment in this context should include the introduction into domestic law of (a) clear time-limits for the enforcement of final judgments and decisions relating to the restitution of agricultural land, and (b) a remedy affording the persons concerned an effective means of obtaining compensation in case those time-limits have not been observed.

C. Costs and expenses

23. The applicants did not claim costs and expenses for the proceedings under Article 41 of the Convention.

24. The Court sees no reason to make an award under this head in the absence of any claim by the applicants.

D. Default interest

25. 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. *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 Bulgarian levs at the rate applicable at the date of settlement:

(i) jointly to the two applicants, EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) to each applicant, EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(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;

2. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 13 January 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ineta Ziemele
Deputy Registrar	President