

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

THIRD SECTION

CASE OF MADZHAROV v. BULGARIA

(Application no. 5113/20)

JUDGMENT

STRASBOURG

5 November 2024

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



In the case of Madzharov 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. 5113/20) 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 17 January 2020 by a Bulgarian national, Mr Georgi Paskalev Madzharov ("the applicant"), who was born in 1990, lives in Burgas and was represented by Ms T. Peeva, a lawyer practising in Burgas;

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

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. In 2019 the governor of Burgas Region expropriated a plot of land measuring 6,178 square metres for the construction of a road. While the land was at that time formally considered agricultural, under the local urban development plan of 2011 it had been designated for public and administrative services, commerce, and small private enterprises. The applicant had bought it in 2014.

2. In the expropriation proceedings, which were concluded with a final judgment of the Burgas Administrative Court of 17 July 2019, the compensation to be accorded to the applicant was calculated on the basis of transactions with agricultural land in the period preceding the expropriation. The compensation thus amounted to 102,396 Bulgarian levs (BGN), equivalent to 52,376 euros (EUR), or BGN 16.57 (EUR 8.47) per square metre.

3. The applicant complained under Article 1 of Protocol No. 1 that the amount of compensation was inadequate as it was considerably below the actual market value of his plot of land.

THE COURT'S ASSESSMENT

4. The Court notes that this complaint 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.

5. 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).

6. 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 *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 met the requirement of being reasonably related to the actual value of the applicants' land.

7. 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.

8. As noted, the compensation awarded was equivalent to BGN 16.57 (EUR 8.47) per square metre (see paragraph 2 above).

9. In order to justify such a level, the Government pointed out that the land was formally considered agricultural (see paragraph 1 above) and that the compensation had been calculated in accordance with the requirements of the State Property Act, on the basis of recent transactions with other plots of agricultural land.

10. The applicant, for his part, objected against the level of compensation, as well as the treatment of his land as purely agricultural. He put forward the arguments below.

11. First, the land had been designated for construction under the local urban development plan of 2011 (see paragraph 1 above). Even before the adoption of that plan, in 2007 the previous owner of the plot had initiated a procedure to transform it into constructible land, to which the municipal

authorities had consented in principle; the owner had however abandoned the procedure. Second, the compensation for a neighbouring plot expropriated in 2019 in the same expropriation procedure but treated as urbanised land had been set at EUR 20.85 per square metre. Third, the court-appointed expert who had calculated the value of the applicant's land on the basis of twenty transactions with other agricultural land had explained at a court hearing, in response to a question from the applicant's representative, that she had had to take into account all types of agricultural land, including plots situated far away but still in the region of Burgas, and plots which were purely agricultural and with no development prospects. However, she considered that four of the transactions from the list concerned land similar to that of the applicant, namely in proximity, in an urbanised area, and situated close to a major road; the average price based on these four transactions was BGN 61 (EUR 31) per square metre.

12. The Court is satisfied that the circumstances referred to by the applicant are sufficient for it to conclude that the real market value of the expropriated land could have been substantially higher than the compensation awarded at the national level. In particular, it does not consider the labelling of the applicant's land as agricultural to be of a decisive character. It is obvious that at the time of expropriation the land had a potential beyond agricultural use, seeing that it was situated in an industrial zone and allocated under the local urban development plan for industrial and commercial development (see paragraph 1 above). In addition, the Court has held in similar circumstances that what mattered was not the land's formal status, but its actual value (see *Bozhilov and Others*, § 12, and *Nevada Tours 2004 AD and Bulgarian Tourist Company Global Tours AD*, § 14, both cited above).

13. As to the Government's argument that the compensation at the domestic level was calculated in accordance with the requirements of the State Property Act (see paragraph 9 above), 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 in the present case was not 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 deprivation 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 about 140,000 euros (EUR), namely the difference between the compensation calculated at the domestic level and what he considered to represent the fair market value of his land. In respect of non-pecuniary damage, the applicant claimed EUR 5,000. Lastly, he claimed EUR 1,700 for the costs and expenses incurred before the Court, namely for legal representation and translation

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. In particular, the values of other plots of land mentioned in paragraph 11 above are insufficient in that regard.

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.

23. Lastly, having regard to the documents in its possession, the Court awards in full the amount claimed for costs and expenses, namely EUR 1,700, to which should be added any tax that may be chargeable to the applicant.

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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,700 (one thousand seven hundred euros), plus any tax that may be chargeable to the applicant, 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;

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