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

FIFTH SECTION

DECISION

Application no. 54833/07
Todorka Petrova DIMITROVA and Others
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 3 November 2016 as a Chamber composed of:

Angelika Nußberger, *President,*
Erik Møse,
Khanlar Hajiyev,
André Potocki,
Yonko Grozev,
Síofra O'Leary,
Carlo Ranzoni, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 30 November 2007,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are Bulgarian nationals. Their particulars are set out in the appendix. The applicants were represented by Mr M. Ekimdzhiev and Ms G. Chernicherska, lawyers practising in Plovdiv. One of the applicants passed away in 2010 and her heirs, whose names are also indicated in the appendix, expressed the wish to continue the proceedings in her stead.

2. The Bulgarian Government ("the Government") were represented by their Agent, Ms L. Gyurova, of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

1. *Restitution of the applicants' property and* rei vindicatio *proceedings*

4. An ancestor of the applicants owned agricultural land on the outskirts of Sofia, which was collectivised in the 1950s. It was initially managed by an agricultural cooperative, but was subsequently, together with other land, allocated to State-owned film studios and became part of what was known as "the Boyana National Film Centre". At the beginning of the 1990s the State enterprise managing these facilities was transformed into a State-owned company, initially named Boyana Film EAD and, after its privatisation in 2007, Nu Boyana Film AD.

5. Following the adoption of the Agricultural Land Act in 1991, which, under certain conditions, provided for the restoration of property titles to agricultural land, on 14 March 1993 the competent body dealing with restitution – the local agricultural land commission – held that the applicants were entitled to restitution in kind of their ancestor's entire plot, measuring 4,900 sq. m in total.

6. In 1996 the applicants brought *rei vindicatio* proceedings against Boyana Film EAD. On 14 October 1998 the Sofia District Court allowed the action in part and ordered the company to hand over possession of 2,830 sq. m of the plot; it found that the company did not hold the remainder of the land, which had been taken by a street. The domestic court observed that the applicants' property rights had been restored by virtue of the decision of 14 March 1993, whereas the company, which had made no submissions before it, had failed to show that it possessed the land on any valid legal grounds.

7. The judgment of the Sofia District Court, not having been appealed against, became final on 14 July 1999.

8. On 20 December 1999 the agricultural land commission issued another decision, restoring the applicants' property rights in respect of 2,830 sq. m of their original plot, and refusing restitution as regards the remainder. The applicants did not appeal against that decision.

9. In 2000 they brought enforcement proceedings against Boyana Film EAD, seeking enforcement of the judgment of 14 October 1998. On two occasions, in August 2000 and December 2002, a bailiff formally handed over possession of the plot to the applicants, tracing its borders with poles inserted into the ground, and evicted the company. However, on each occasion the company removed the poles and continued to use the land, which remained within the film studios' fenced territory.

2. Other proceedings

10. In a decision dated 7 December 2001 the local mayor ordered that the plot described above be registered in the cadastral plans as the property of the applicants. In 2003 Boyana Film EAD challenged that order before the courts. The ensuing proceedings continued until 31 January 2012, with the courts rejecting the company's challenge, finding in particular that, as the judgment of 14 October 1998 had already recognised the applicants' property rights to the plot at issue, the proposed amendment to the cadastral plan was lawful.

11. In 2007 the company, already named Nu Boyana Film AD, brought court proceedings against the applicants, seeking a declaration that it was the owner of the disputed plot. Having satisfied itself on the basis of expert reports that the plot claimed was identical to the one which had been the subject of the previous proceedings between the same parties, the Sofia District Court found, in a decision of 25 February 2009, that the claim was inadmissible because the matter had already been settled with *res judicata* effect. That decision became final on 20 January 2010.

12. In December 2010 the body tasked with maintaining cadastral plans, the Geodesy, Cartography and Cadastre Agency, adopted a new plan for the area, naming the applicants as the owners of the plot at issue. Nu Boyana Film AD applied for the plan to be amended to say that ownership of the plot was "in dispute". Its application was allowed, by order of the head of the Agency on 11 February 2011. The applicants challenged that order successfully, with the national courts pointing out in their judgments that ownership of the plot was not "in dispute", particularly as the proceedings regarding amendments of the cadastral plan described in paragraph 10 above were not determinative of any property rights of the parties. The final judgment in that series of proceedings was given on 15 July 2013. In November 2013 the applicants' representative was informed that the cadastral plans had been amended in accordance with the courts' findings.

B. Relevant domestic law and practice

1. Code of Civil Procedure

13. Article 415 § 1 of the 1952 Code of Civil Procedure, in force until 1 March 2008, provided that, in the context of enforcement proceedings, where a person had been ordered to hand over immovable property, a bailiff would evict that person from the property, if necessary forcibly, and formally transfer possession to the claimant. Under Article 418, if the person who had been removed from the property retook possession of it, he or she was to be evicted again. It was expressly noted that, in such a case, the person responsible for unlawfully taking possession could also incur criminal liability under Article 323 § 2 of the Criminal Code.

14. Similar provisions are contained in Article 522 § 1 and Article 525 of the current Code of Civil Procedure.

2. Criminal Code

15. Under Article 323 § 2 of the 1968 Criminal Code, it is an offence for any person to take possession of immovable property from which they have been lawfully removed. The offence is punishable by up to three years' imprisonment and a fine. The offence can also be committed by a representative of the relevant person (*Решение № 248 от 14.07.2011 г. на ВКС по н. д. № 1302/2011 г., II н. о., НК*).

3. Property Act of 1951

16. Under section 109(1) of that Act, an owner may request the cessation of any unjustified action which hinders him or her in the exercise of his or her property rights.

17. In a 1985 interpretative decision (*Тълкувателно решение № 31/84 г. от 6.II.1985 г. по гр. д. № 10/84 г., ОСГК*) the former Supreme Court explained that such a claim (*actio negatoria*) provided protection against unjustified interference – whether direct or indirect – which might prevent an owner from using his or her property to the fullest extent. It pointed out that the claim could be used to declare such interference unlawful and enjoin the persons concerned to stop it and remove its effects.

18. In a number of cases the domestic courts, examining actions under section 109(1), have ordered the defendants to remove fences constructed by them, obstructing the plaintiffs' access to their own properties (for example, *Решение № 229 от 7.05.2009 г. на ВКС по гр. д. № 511/2008 г., I г. о., ГК*; *Решение № 37 от 7.03.2014 г. на ВКС по гр. д. № 4245/2013 г., I г. о., ГК*; and *Решение № 74 от 9.07.2014 г. на ВКС по гр. д. № 6580/2013 г., II г. о., ГК*).

4. Obligations and Contracts Act of 1950

19. Section 59 of the Act is the general provision on unlawful enrichment. It has been relied on in a number of cases concerning unlawful hindrance of the effective enjoyment of a claimant's right of property, with the courts, as a rule, awarding in damages what has been shown to be the "market rent" for a property for the period at issue (among many others, *Решение № 1415 от 23.VIII.1995 г. по гр. д. № 1519/95 г., IV г. о.*; *Решение № 1937 от 24.XI.1995 г. по гр. д. № 2368/94 г., IV г. о.*; *Решение № 4 от 23.01.2009 г. на ВКС по гр. д. № 5382/2007 г., II г. о.*; *Решение № 90 от 8.07.2009 г. на ВКС по т. д. № 3/2009 г., I т. о.*; and *Решение № 122 от 14.03.2012 г. на ВКС по гр. д. № 1472/2011 г., IV г. о.*).

COMPLAINTS

20. The applicants complained under Article 6 § 1 of the Convention that, in accepting for examination Nu Boyana Film AD's claim to ownership of the disputed property described in paragraph 11 above, the national courts had acted in breach of the principle of legal certainty and respect for the *res judicata* effect of final judgments.

21. They also complained, relying on Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1, that they had been unable to take possession of their plot in accordance with the court judgment of 14 October 1998, and had been placed in a situation of prolonged uncertainty as to their property rights.

THE LAW

A. Preliminary issue

22. One of the applicants, Ms Velichka Petrova Stoyanova, passed away in 2010 and her heirs, Ms Boyka Borislavova Angelova and Petar Borislavov Todorov, expressed the wish to pursue the application in her stead (see paragraph 1 above and the Appendix). It has not been disputed that they are entitled to do so and the Court sees no reason to hold otherwise (see, among others, *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, nos. 8549/06 et al., § 36, 29 July 2010).

B. Complaints under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1

23. The applicants raised complaints under Article 6 § 1 and Article 13 of the Convention and Article 1 of Protocol No. 1 (see paragraphs 20-21 above). The Court is of the view that it suffices to examine the complaints under Article 6 § 1 and Article 1 of Protocol No. 1.

Article 6 § 1 of the Convention, in so far as relevant, reads:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 1 of Protocol No. 1 reads:

> "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."

1. Arguments of the parties

24. The Government contested the complaints, pointing out that, in the judicial proceedings following the judgment of 14 October 1998, the national courts had duly taken into account that judgment and its binding force on the parties and had never questioned its stability and finality. The Government were of the view that none of the judicial proceedings initiated after the judgment of 14 October 1998 had effectively prevented the applicants from enjoying their possessions, and argued that the State could not be held responsible for the refusal of Boyana Film EAD, later Nu Boyana Film AD, to accept the judgment and its binding force. The Government also pointed out that the State had created an effective legal framework aimed at guaranteeing the right of property, which the applicants had not adequately made use of, in particular because they had failed to seek the prosecution of the individuals responsible for an offence under Article 323 § 2 of the Criminal Code and had failed to claim compensation.

25. The applicants disagreed and argued that the manner in which the national courts had handled the proceedings brought by Boyana Film EAD had meant that the company had been "allowed" to avoid enforcement of the judgment of 14 October 1998 and to systematically abuse its rights. They were of the view that the enforcement procedure initiated by them after that judgment (see paragraph 9 above) had turned out to be ineffective, and that the subsequent proceedings had hindered any attempt on their part to use the plot of land, as the proceedings were considered to have given rise to a "dispute" as to the plot's ownership. The applicants thus reached the conclusion that the State had failed in its positive obligations under Article 1 of Protocol No. 1 to protect their right of property, as outlined, for instance, in the Court's judgments in the cases of *Kotov v. Russia* [GC] (no. 54522/00, § 3 April 2012), and *Ceni v. Italy* (no. 25376/06, 4 February 2014).

2. The Court's assessment

(a) Complaint related to the *res judicata* effect of the judgment of 14 October 1998

26. As the Court has stated in previous cases, the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of the rule of law and legal certainty, encompasses the requirement that, where the courts have finally determined an issue, their ruling should not be called into question (see *Brumarescu v. Romania* [GC],

no. 28342/95, § 61, ECHR 1999-VII, and *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, § 61, 12 January 2006).

27. In the present case, Nu Boyana Film AD brought an action contesting the applicants' property rights, a question already decided upon in the judgment of 14 October 1998 following proceedings between the parties (see paragraph 11 above). The Sofia District Court, which examined the case at first instance, did not collect evidence on the merits of the company's claim, but only satisfied itself, on the basis of expert reports, that that claim concerned the same plot of land. Its findings were upheld upon appeal (see paragraph 11 above). The Court does not accept the applicants' claim that the mere fact that the national courts opened the proceedings at issue breached the rule of *res judicata*, as those courts were obliged to examine the company's claim, considering the company's own right of access to a court, even if only to receive a ruling on the admissibility of its claim. Moreover, the courts declared the claim inadmissible, precisely because the question raised was already *res judicata*.

28. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(b) Complaint relating to the applicants' inability to take possession of their plot

29. This complaint is to be examined under Article 1 of Protocol No. 1 (see paragraph 23 above).

30. In the judgment of 14 October 1998 the District Court ordered Boyana Film EAD to hand over possession of a plot measuring 2,830 sq. m to the applicants, who were recognised as its owners (see paragraph 6 above). However, even though that judgment became final in July 1999 (see paragraph 7 above), the applicants have been unable to take possession of the land, as it has remained within the film studios' fenced territory.

31. The applicants argued that this state of affairs was due to a failure on the part of the State to meet its positive obligations under Article 1 of Protocol No. 1 to protect their right of property against a private entity. At the same time, they also seemed to claim that the State authorities were directly responsible, as they had allegedly "allowed" the company to avoid enforcement and systematically abuse its rights (see paragraph 25 above).

32. As concerns any direct responsibility on the part of the State authorities, the Court observes that, at the request of the applicants, in 2000 a bailiff initiated enforcement proceedings and on two occasions formally transferred possession to the applicants, evicting the company from the plot in accordance with the procedure provided for by the relevant provisions of the Code of Civil Procedure (see paragraphs 9 and 13 above). As noted by the Government (see paragraph 24 above), the State cannot be held directly responsible for the company's subsequent refusal to allow the applicants access to the plot.

33. Moreover, the Court cannot accept the applicants' argument (see paragraph 20 above) that, in the proceedings initiated by Boyana Film EAD or the applicants after the judgment of 14 October 1998, the national courts were responsible for any obstruction to the applicants' effective enjoyment of their possessions. The proceedings whereby the company and the applicants challenged amendments to the relevant cadastral plans, described in paragraphs 10 and 12 above, did not involve a contestation of the applicants' property rights clearly established in the judgment of 14 October 1998; this was expressly noted by the national courts (see paragraph 12 above). Accordingly, the fact that those proceedings were ongoing could not prevent the applicants from seeking to use and profit from their land. As concerns the proceedings in which the company sought a declaration that it was the owner of the plot at issue (see paragraph 11 above), the Court already noted that they were discontinued in view of the judgment of 14 October 1998. It could be argued that those proceedings gave rise to a "dispute" as to who owned the applicants' plot of land, possibly placing the applicants in a situation of uncertainty and obstructing any sale of the land. However, the national courts cannot be held responsible for that, because, as already pointed out (see paragraph 27 above), they could not refuse to examine the admissibility of the company's claim. In any event, there is no reason to conclude that the courts tolerated or "allowed" any abuse on the part of Boyana Film EAD prejudicing the applicants' rights, as claimed by the applicants (see paragraph 25 above).

34. In view of the above, the Court concludes that the State authorities cannot be held directly responsible for any inability of the applicants to enjoy their possessions. It therefore remains to be seen whether, alternatively, the State failed in its positive obligations to provide protection to the applicants in relation to the actions of a private body, namely Boyana Film EAD.

35. The Court has recently defined States' positive obligations under Article 1 of Protocol No. 1 in the case of *Kotov* (cited above, §§ 109-15, with further references), holding in particular (in § 113) that:

> "[w]hen an interference with the right to peaceful enjoyment of possessions is perpetrated by a private individual, a positive obligation arises for the State to ensure in its domestic legal system that property rights are sufficiently protected by law and that adequate remedies are provided whereby the victim of an interference can seek to vindicate his rights, including, where appropriate, by claiming damages in respect of any loss sustained."

36. In the present case, despite being on two occasions lawfully evicted from the plot of land, possession of which had been formally transferred to the applicants, Boyana Film EAD denied the applicants access to it, keeping it within the film studios' fenced territory (see paragraph 9 above).

37. In so far as the applicants' access to the plot was obstructed by the existing fence, the applicants could seek a judicial order for its removal,

through an *actio negatoria*, as provided for under section 109(1) of the Property Act. There is nothing to suggest that such an action would have been ineffective and owners having had their access to properties obstructed by fences have successfully used it (see paragraphs 16-18 above). However, the applicants remained completely passive in that regard.

38. In addition, domestic law provided for other avenues to bring about the enforcement of the judgment of 14 October 1998. The individuals responsible for obstructing the applicants' access to their plot could be held criminally liable under Article 323 § 2 of the Criminal Code, which makes it an offence to take back possession of immovable property from which one has been lawfully removed (see paragraph 15 above). Furthermore, the applicants could have sought damages as a result of being denied the opportunity to use their property, under section 59 of the Obligations and Contracts Act (see paragraph 19 above).

39. The Court sees no reason to doubt that the avenues described above could, in principle, provide adequate protection for the applicants, as required under Article 1 of Protocol No. 1. An *actio negatoria* could have ensured to the applicants access to their plot. Any criminal liability on the part of the persons responsible for obstructing this access could have additionally prompted the company's management to abide by the judgment of 14 October 1998. Lastly, the opportunity to claim damages could have compensated the applicants for any loss sustained. The applicants have not contested the effectiveness in practice of the remedies at issue, and have not claimed that they were for some reason unavailable to them.

40. In view thereof, the Court sees no reason to question the adequateness and effectiveness of the domestic legal system to protect the applicants' property rights. The respondent State has thus complied with its positive obligations under Article 1 of Protocol No. 1, as defined above.

41. Accordingly, the Court finds that the present complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Holds that the deceased applicant's heirs, as indicated in the appendix, have standing to continue the proceedings in her stead;

Declares the application inadmissible.

Done in English and notified in writing on 24 November 2016.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President

APPENDIX

1. Todorka Petrova DIMITROVA, born in 1936, lives in Sofia;
2. Milena Grigorova BOGDANOVA-KIRILOVA, born in 1964, lives in Sofia;
3. Violeta Petrova KUKEVA, born in 1941, lives in Sofia;
4. Kapka Grigorova PESHKALOVA, born in 1951, lives in Sofia
5. Emiliya Borisova RANGELOVA, born in 1950, lives in Sofia;
6. Tsvetanka Hristova STOYANOVA, was born in 1930, lives in Sofia;
7. Velichka Petrova STOYANOVA, born in 1932, passed away in 2010, her heirs are Boyka Borislavova ANGELOVA and Petar Borislavov TODOROV.