

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

FOURTH SECTION

DECISION

Application no. 39135/06
Iliya Ivanov FILIPOV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 20 November 2012 as a Chamber composed of:

Ineta Ziemele, *President,*
David Thór Björgvinsson,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*

and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 18 September 2006,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Iliya Ivanov Filipov, is a Bulgarian national, who was born in 1947 and lives in Plovdiv. He is represented before the Court by Mr M. Ekimdzhiev, Ms K. Boncheva and Ms G. Chernicherska, lawyers practising in Plovdiv.

2. The Bulgarian Government ("the Government") are represented by their Agent, Mrs R. Nikolova, 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. The applicant's restitution requests of 1991 and 1994 and the land commission's decisions of 1992 and 1998

4. In 1991 the Bulgarian Parliament enacted the Agricultural Land Act, which provided for restitution, under certain conditions, of formerly collectivised agricultural land.

5. On 26 November 1991 the applicant submitted to the local land commission in Rodopi district, Plovdiv, a request for the restitution of several plots of agricultural land located in different areas. The request concerned, *inter alia*, a plot of 2,500 square metres in the Ilishika area, in the vicinity of the village of Brani Pole.

6. By a decision of 25 November 1992 the land commission recognised the applicant's right to restitution, by way of a "land redistribution plan", of several plots. It is unclear whether these included the plot of 2,500 square metres mentioned above.

7. On 25 July 1994 the applicant submitted a second restitution request. In so far as relevant, it mentioned explicitly 11,900 square metres of land, which included the plot of 2,500 square metres in the Ilishika area.

8. Both restitution requests made by the applicant (in 1991 and 1994) were handwritten and contained very few details about the plots concerned.

9. On 26 June 1998 the land commission issued another decision, refusing the applicant's request for restitution in their actual boundaries of two plots covering 11,900 square metres. It appears that these were the plots mentioned in the applicant's request for restitution of 25 July 1994.

10. The decision of 26 June 1998 mentioned that it was amenable to appeal before the local District Court. The applicant did not appeal.

2. The applicant's challenges to the local land plan

11. A plan for the area depicting the location of plots restored to their owners in their actual boundaries was published in 1999.

12. On an unspecified date after 1999 the applicant wrote to the local Agriculture and Forestry Department ("the local authority") which had replaced the land commission following legislative amendments. He stated that his land had been unlawfully transferred to third parties.

13. On 10 February 2004 a new amended plan was published, depicting the location of plots restored to their owners in their actual boundaries.

14. On 23 February 2004 the applicant lodged objections, stating, *inter alia*, that he was seeking restitution of plots totalling 7,900 square metres in the Ilishika area.

15. On 10 March 2004 the local authority rejected the applicant's objections, noting that he did not have a decision recognising his right to restitution of the land at issue and that the restitution had not been requested in due time.

3. The District Court's judgment of 25 March 2005

16. On 21 April 2004 the applicant appealed to the Plovdiv District Court against the decision of 10 March 2004. He stated, *inter alia*, that his ancestors had owned three plots in the Ilishika area, two of them of 2,700 square metres each and the third one of 2,500 square metres (7,900 square metres in total). He stated also that instead of restoring the land at issue to him, the land commission had transferred it to third parties, whose ancestors had not owned land in the area.

17. On 25 March 2005 the Plovdiv District Court quashed the decision of 10 March 2004, finding it null and void because it did not specify the plots it concerned and did not contain sufficient reasoning.

18. Discussing the restitution rights of the applicant, the District Court noted that the exact number and identity of the plots which he had included in his restitution requests was unclear. However, the land commission and the local authority should have analysed all the material in their possession to clarify this point.

19. The applicant had initially requested restitution of a plot of 2,500 square metres in Ilishika. The court noted that it was unclear whether the decision of 25 November 1992 had recognised the applicant's rights over that plot. It nevertheless proceeded on the basis that it had. The court further noted that on 26 June 1998 the applicant had been refused restitution of land in the relevant area, but considered that decision null and void, as it had not given sufficient details about the exact plots concerned.

20. The court further noted that in addition to the plot of 2,500 square metres in Ilishika which the applicant had expressly mentioned in his restitution requests, two other plots in the same area, one covering 2,500 square metres and the other 2,700 square metres, had been owned by his ancestors, as could be seen from the documents in the file. While the applicant had never mentioned those two plots in his restitution requests, the relevant documents had been in the file and, according to established practice, the local authority should have considered that there was a request by the applicant in respect of those two plots as well. The court went on to consider documentary evidence and witness statements, and established that the applicant was entitled to restitution and that it was possible to order restitution "in actual boundaries".

21. The court thus instructed the local authority to issue decisions recognising the applicant's restitution rights with regard to the two plots not recognised earlier, stating that one of them was of 2,500 square metres and the other of 2,700 square metres. The District Court apparently erred in

indicating those areas, because the additional plots claimed by the applicant were both of 2,700 square metres and apparently it had accepted this, since it ordered restitution in actual boundaries of land totalling 7,900 square metres (the plot of 2,500 subject to the land commission's earlier decisions, plus the two additional plots of 2,700 square metres each).

22. The Plovdiv District Court's judgment became final in April 2005.

4. The local authority's decision of 21 September 2006

23. On 21 September 2006 the local authority issued a decision recognising the applicant's rights to the restitution "in actual boundaries" of land in the Ilishika area, stating that it was acting in execution of the District Court's judgment of 25 March 2005. The local authority's decision mentioned: i) a plot of 2,500 square metres, which had been included in the applicant's restitution requests, ii) a plot of 2,700 square metres, and iii) a plot of 7,900 square metres.

24. It is unclear whether the local authority misread the District Court's judgment of 25 March 2005 and thus cited the figure representing the totality of the land recognised by that judgment – 7,900 square metres – as a reference to an additional separate plot. The decision of 21 September 2006 did not mention that any new evidence had been examined or had served as the basis for that decision.

5. Judicial proceedings concerning 1,450 square metres of land

25. In 2007 the applicant brought two separate actions under section 14(4) of the Agricultural Land Act against persons who had become the owners of parts of the land he claimed, seeking declarations that his ancestor had been the owner of that land.

26. One of the two cases, which concerned a plot of 700 square metres, was terminated, as the applicant had brought his claim against persons who had in the meantime purchased the land. Under domestic law, the action for a declaration under section 14(4) could only be directed against pre-collectivisation owners or their heirs.

27. The second case, which concerned a plot of 750 square metres restored in 1999 to the heirs of Mr K., was ended by a judgment of the Plovdiv District Court of 22 April 2008, which established that the applicant's ancestor, and not Mr K., had been the previous owner of the disputed land.

28. The two plots above had already been built upon before the applicant brought his actions. In addition, in 2006 the heirs of Mr K. had transferred the plot of 750 square metres to third parties.

6. Restitution to the applicant of 4,546 square metres of the land at issue

29. Following the District Court's judgment of 25 March 2005 and the local authority's decision of 21 September 2006, a cadastral photography exercise was carried out, and plans issued, to finalise the restitution procedure.

30. On 5 March 2009 the local authority issued a decision ordering the restitution to the applicant of 4,546 square metres of land in Ilishika, noting that following the cadastral photography it could be seen that these were the "proven and actually existing (retrievable) ancient boundaries".

31. The applicant was provided with a plan of the plot of 4,546 square metres, obtained a notary deed and entered into possession.

32. In a written statement prepared after the present application's communication the local authority maintained that the remainder of the land claimed by the applicant could not be returned to him because it had already become the property of other individuals. It also stated that by its decision of 5 March 2009 it had executed the judgment of 25 March 2005 "in respect of plots totalling 7,900 square metres".

33. The Court has not been informed of any developments in the restitution procedure since the decision of 9 March 2009.

B. Relevant domestic law and practice

34. The relevant provisions of the Agricultural Land Act of 1991 have been summarised in the Court's judgments in the cases of *Mutishev and Others v. Bulgaria* (no. 18967/03, §§ 57-92, 3 December 2009); *Lyubomir Popov v. Bulgaria* (no. 69855/01, §§ 83-95, 7 January 2010); and *Sivova and Koleva v. Bulgaria* (no. 30383/03, §§ 29-44, 15 November 2011).

COMPLAINTS

35. The applicant complained under Article 1 of Protocol No. 1 and Article 13 that he had received only part of the land in the Ilishika area that he was entitled to. In his application form submitted in September 2006, the applicant stated that he was entitled to the restitution of 7,900 square metres of land, whereas in additional submissions of September 2010 he cited the figure of 13,500 square metres.

36. The applicant also complained, relying on Article 6 § 1 of the Convention, that the examination of his restitution claims had continued for an excessively lengthy period of time.

37. Lastly, the applicant complained under Article 6 § 1 that the Plovdiv District Court's judgment of 25 March 2005 had not been fully executed.

THE LAW

38. The Court notes at the outset that the applicant's complaints concern essentially: 1) the authorities' failure to return to him in its entirety the land indicated in the Plovdiv District Court's judgment of 25 March 2005 and the local authority's decision of 21 September 2006, and 2) the duration of the restitution process. The applicant relies on Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1, but the Court is of the view that both complaints are most appropriately examined under Article 1 of Protocol No. 1 alone, which reads as follows:

> "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."

A. Complaint concerning the authorities' failure to return to the applicant part of the land claimed by him

39. In 2009 the applicant obtained the restitution "in actual boundaries" of 4,546 square metres of land.

40. The Government argued that it was impossible to return to him the remainder of the land described in the Plovdiv District Court's judgment of 25 March 2005 in its "actual boundaries", because this land had already at the relevant time become the property of other individuals. The Government also pointed out that the applicant was entitled to seek compensation through the award of other land or compensation bonds.

41. The applicant disputed these arguments. He considered that he had been entitled to the restitution of his ancestor's plots in their "actual boundaries", and that the authorities' failure to transfer this land to him had breached his property rights.

42. The Court notes at the outset that the Plovdiv District Court's judgment of 25 March 2005 and the local authority's decision of 21 September 2006 created an entitlement to restitution, as provided for under domestic law, which was sufficiently established to amount to a legitimate expectation for the applicant, and thus a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Lyubomir Popov*, cited above, § 117, and *Vasilev and Doycheva v. Bulgaria*, no. 14966/04, §§ 41-43, 31 May 2012).

43. In its decision of 21 September 2006 the local authority recognised the applicant's right to the restitution of several plots of land. The Court observes however that this decision was not sufficient to create property title for him to an identified plot; in fact, domestic law envisaged the possibility of awarding compensation even in cases where the courts had recognised claimants' right to restitution "in actual boundaries" (see *Sivova and Koleva*, cited above, § 33).

44. The applicant argued that following the decision of 9 March 2009 by means of which, in execution of its earlier decision of 21 September 2006, the local authority restored his property rights to 4,546 square metres of land, he remained entitled to receive other plots of land in their "actual boundaries", and in particular the plot of 750 square metres in respect of which he had successfully pursued proceedings against the heirs of Mr K. under section 14(4) of the Agricultural Land Act. The Government argued that it had been impossible to allot other plots in the relevant area to the applicant because all available land had already become the property of other individuals.

45. The Court considers that it is not its task to assess whether the applicant should have received the land claimed by him in its "actual boundaries" or other land or bonds in compensation. As already discussed, the decision of 21 September 2006 did not finally determine the manner of restitution, and no subsequent decision to that effect has been adopted for the land exceeding 4,546 square metres. In their submissions to the Court the Government argued that actual restitution of the land claimed by the applicant was impossible because there was no land available, but in fact no formal decision on the matter had been taken by the relevant authorities. However, if the applicant considered that there was more land which could have been returned to him in its "actual boundaries", he could have applied for a new decision identifying such land, and could have appealed against any decision of the local authority with which he was not satisfied. It appears to the Court that following the decision of 9 March 2009 the local authority saw the award of compensation as the only possibility which remained open, and the applicant made no attempt to question or undermine this position, including by bringing the matter before the courts. Nor did he, for that matter, apply for compensation in lieu of restitution, whether or not it had already become apparent that actual restitution was impossible.

46. Thus, after 2009 the applicant made no attempt to have the scope of his restitution rights determined with finality. He has not argued that it was no longer possible for him to seek such a determination, nor that he could not, if actual restitution was impossible, apply for compensation in lieu thereof. Prior to a decision of the relevant authorities specifying his rights, it is not for the Court to speculate whether the restitution would be granted or not, and whether the reasons justifying any decision of the authorities would

be relevant and sufficient in view of the requirements of Article 1 of Protocol No. 1.

47. The Court concludes therefore that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint concerning the length of the restitution process

48. As regards this part of the application, the Government argued that the applicant had failed to exhaust the available domestic remedies because he had not brought an action for damages against the State on account of the delays in the restitution procedure. The applicant contested this argument.

49. The Court takes note of the objection regarding non-exhaustion of domestic remedies. However, it considers that it is not necessary to examine it, given that it is of the view that the complaint is in any event inadmissible for the reasons below.

50. The Court reiterates that it has already found that the applicant had a legitimate expectation of restitution. In respect of 7,900 square metres of land that expectation arose on 25 March 2005, when the Plovdiv District Court recognised the applicant's restitution rights. This was also the case in respect of the plot of 2,500 square metres which the applicant had mentioned expressly in his earlier restitution requests, because even if it is accepted that the land commission's decision of 25 November 1992 concerned that plot and recognised thereby the applicant's right to its restitution, in another decision of 1998 the commission refused restitution. In fact, it was not until the judgment of 25 March 2005 that the 1998 refusal was found to be null and void and the applicant's restitution rights were explicitly recognised.

51. In so far as the applicant claims to have acquired a legitimate expectation of obtaining the restitution of another 5,200 square metres of land on the basis of the administrative decision of 21 September 2006 by means of which the local authority recognised his restitution rights to 13,100 square metres, that expectation only arose on 21 September 2006.

52. The Court notes that in respect of 4,546 square metres of land the restitution process was completed in 2009. After 2006 the local authorities took some technical measures in preparation of the restitution, such as carrying out a cadastral photography exercise and issuing a plan of the plot. This necessarily took some time and, moreover, there were no lengthy periods of inactivity. Therefore, the Court does not consider that the restitution process in respect of this part of the land continued for an excessively lengthy period of time (see *Zagorchinova v. Bulgaria* (dec.), no. 26471/06, 5 July 2012; distinguish from *Naydenov v. Bulgaria*, no. 17353/03, §§ 81-84, 26 November 2009; and *Lyubomir Popov*, §§ 121-31, and *Vasilev and Doycheva*, §§ 48-52, both cited above).

53. As to the remainder of the land claimed, the Court has already noted that after 2009 the applicant could have sought determination of his restitution rights. It appears that the authorities considered that it was only possible for him to receive compensation and did not take any action, in view of the fact that he had not made a compensation request. The applicant has not informed the Court of any action taken by him at this stage aimed at obtaining restitution or compensation. Accordingly, the Court cannot conclude that any delays occurring at this stage were attributable to the authorities (see, *mutatis mutandis*, *Zagorchinova*, cited above).

54. It follows from the above that the present complaint is also 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

Declares the application inadmissible.

Lawrence Early Registrar	Ineta Ziemele President