

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

FOURTH SECTION

DECISION

Application no. 20701/09
Magdalena Angelova HADZHIYSKA
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 15 May 2012 as a Chamber composed of:

Lech Garlicki, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged with the European Commission of Human Rights on 19 February 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Magdalena Angelova Hadzhiyska, is a Bulgarian national who was born in 1933 and lives in Lesichovo. She was represented before the Court by Mr M. Ekimdzhiev, Ms K. Boncheva and Ms G. Chernicherska, lawyers practising in Plovdiv.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant's village is situated on the banks of Topolnitsa river, at about fifteen kilometres downstream from Topolnitsa Dam.

4. On 5 and 6 August 2006, following heavy rain, the river broke its banks and flooded the applicant's house. The water ruined a stone fence, a shed and a summer kitchen, and carried away furniture, wood, home-canned food, and other chattels. The house's cellar and basement were damaged by dampness.

5. On 18 April 2007 the applicant brought a claim for damages under section 1 (1) of the State Responsibility for Damage Act 1988 against the Ministry of Environment and Waters and the Governor of Pazardzhik Region. She alleged that the flood water had carried away trees and branches which had cluttered the riverbed. As the defendants had failed to clean it, this had impeded the flow of water and had caused flooding. She also alleged that no embankments or other protective facilities had been built to protect her village from flooding, and that no monitoring or alert systems had been put in place. She claimed that those omissions had been in breach of the defendants' obligations under several provisions of the Waters Act 1999 that expressly envisaged such measures.

6. Having initially decided to proceed with the case, in a decision of 4 August 2008, the Pazardzhik Administrative Court dismissed the applicant's claim as inadmissible. It held that the administrative courts were not competent to examine it because the alleged omissions of the defendants did not constitute administrative action within the meaning of Article 203 § 1 of the Code of Administrative Procedure and section 1 (1) of the 1988 Act. The relations between the applicant and the authorities in connection with the flood were not characterised by an exercise of authority and were therefore not governed by the rules of administrative law. The impugned omissions of the authorities did not form part of their administrative activities.

7. On appeal, on 11 November 2008 the Supreme Administrative Court upheld that decision, with almost identical reasoning. It went on to say that the applicant could bring a claim before the civil courts.

COMPLAINTS

8. The applicant complained under Article 1 of Protocol No. 1 that the damage to her house and possessions had been a direct consequence of the authorities' failure to take measures to prevent and mitigate floods, and that as a result of the dismissal of her claim she had not received any compensation for that damage.

9. The applicant further complained under Article 6 § 1 of the Convention that (a) she had not had effective access to a court in respect of her claim for damages against the authorities, (b) the proceedings before the Supreme Administrative Court had taken place in private, and (c) the courts

had not given sufficient reasons for their ruling that the authorities' omissions had not constituted administrative action.

10. Lastly, the applicant complained under Article 13 of the Convention that the Supreme Administrative Court had examined her case in private and without dealing with the merits of the case.

THE LAW

A. Alleged violation of Article 1 of Protocol No. 1

11. In respect of her complaints about the damage sustained by her and the lack of compensation, the applicant relied on Article 1 of Protocol No. 1, which provides:

> "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."

12. The Court notes that following the decision of the Supreme Administrative Court of 11 November 2008 the applicant did not bring a claim under the general law of tort (see paragraph 7 above). Therefore a question about exhaustion of domestic remedies arises. However, the Court does not find it necessary to determine this point, as, for the reasons which follow, it considers that this complaint is in any event manifestly ill-founded.

13. The Court observes that the flood destroyed or damaged real property and belongings of the applicant; those were clearly her "possessions" within the meaning of Article 1 of Protocol No. 1. It must therefore be examined to what extent the authorities were under an obligation to take measures to protect those possessions, and whether this obligation was complied with in the present case (see *Budayeva and Others v. Russia*, nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, § 171, ECHR 2008 (extracts), and *Kolyadenko and Others v. Russia*, nos. 17423/05, 20534/05, 20678/05, 23263/05, 24283/05 and 35673/05, § 214, 28 February 2012 (not final)).

14. According to the Court's case-law, genuine, effective exercise of the right protected by Article 1 of Protocol No. 1 does not depend merely on the State's duty not to interfere, but may require positive measures of

protection, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and the effective enjoyment of his or her possessions. Allegations of a failure on the part of the State to take positive action to protect private property should be examined in the light of the general rule in the first sentence of the first paragraph of Article 1 of Protocol No. 1, which lays down the right to the peaceful enjoyment of possessions (see *Budayeva and Others*, cited above, § 172, with further references).

15. That said, a distinction needs to be drawn between the positive obligations under Article 2 of the Convention and those under Article 1 of Protocol No. 1. Because of the fundamental importance of the right to life, the positive obligations under Article 2 include a duty to do everything within the authorities' power in the sphere of disaster relief for the protection of that right. By contrast, the obligation to protect the right to the peaceful enjoyment of possessions is not absolute, and cannot extend further than what is reasonable in the circumstances. Accordingly, in deciding what measures to take in order to protect private possessions from weather hazards the authorities enjoy a wider margin of appreciation than in deciding on the measures needed to protect lives. Furthermore, natural disasters, which are as such beyond human control, do not call for the same extent of State involvement as dangerous activities of a man-made nature. Accordingly, the State's positive obligations to protect property against the former do not necessarily extend as far as those in the sphere of the latter (ibid., §§ 173-75).

16. Turning to the present case, the Court notes that the applicant's property was damaged as a result of heavy rainfall causing the nearby river to overflow, and not by man-made activities. The case should therefore be distinguished from *Kolyadenko* (cited above, § 215), where a similar overflow was triggered by the human-controlled release of water from a reservoir, and from *Öneryıldız* [GC] (no. 48939/99, § 18, ECHR 2004-XII), where deaths and property destruction were caused by a methane explosion at a rubbish tip constructed and controlled by the authorities. Furthermore, unlike the situation obtaining in *Kolyadenko*, in the instant case the applicant has neither alleged that the authorities could have foreseen or prevented the consequences of the rain, nor provided any details of the scale of the flooding. She rather claimed that the authorities should have built flood-protection facilities, maintained the riverbed, and put in place a warning system to protect her village from weather hazards. However, it remains unclear whether the measures suggested by the applicant could have prevented or mitigated the damage that the flood caused to her possessions, or, in other words, whether the damage sustained by her may be attributed, wholly or partly, to State negligence. From the documents made available to the Court it appears that the scale of the calamity was not such as to cause a serious damage to the applicant's house or threaten her

life. Furthermore, unlike *Öneryıldız* (cited above, § 135), no causal link was established between any acts or omissions of the public authorities and the property damage sustained by her. Article 1 of Protocol No. 1 does not go as far as requiring the Contracting States to take preventive measures to protect private possessions in all situations and all areas prone to flooding or other natural disasters. In view of the operational choices which must be made in terms of priorities and resources, any obligations arising under this provision must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Thus, in the absence of sufficient information or evidence showing that the authorities' actions or omissions caused or contributed to the damage sustained by the applicant, the Court considers that she has failed to make out an arguable claim under Article 1 of Protocol No. 1.

17. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Other alleged violations of the Convention

18. The applicant raised a number of other complaints under Articles 6 § 1 and 13 of the Convention.

19. The Court has examined the remainder of the applicant's complaints as submitted by her. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

20. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı	Lech Garlicki
Deputy Registrar	President