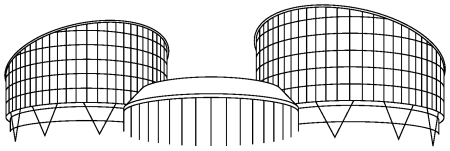

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF STOJANOVSKI AND OTHERS v. THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

(Application no. 14174/09)

JUDGMENT
(Merits)

STRASBOURG

23 October 2014

FINAL

23/01/2015

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

In the case of Stojanovski and Others v. the former Yugoslav Republic of Macedonia,

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

Isabelle Berro-Lefèvre, *President,*
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 30 September 2014,

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

PROCEDURE

1. The case originated in an application (no. 14174/09) against the former Yugoslav Republic of Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Macedonian nationals, Mr Krume Stojanovski, Mr Branislav Janevski and Mrs Silvana Janevska ("the applicants"), on 27 February 2009.

2. The applicants were represented by Mr A. Andreevski, a lawyer practising in Skopje. The Macedonian Government ("the Government") were represented by their Agent, Mr K.Bogdanov.

3. The applicants alleged, in particular, that the authorities' refusal to restore into their possession a plot of land confiscated from their late predecessor violated their rights under Article 1 of Protocol No. 1 to the Convention.

4. On 5 July 2011 this complaint was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1943, 1937 and 1965 respectively and live in Skopje.

A. Background to the case

6. In 1950 two plots of land (former plots nos. 100 and 102) were confiscated from the late Mr K.S., the applicants' predecessor, and a third person. The land was divided into several new plots, which were renumbered in accordance with the new land register (*нов премер*). A new plot, no. 2943/6, comprising both the former plots nos. 100 and 102, was created. Two separate sets of restitution proceedings concerning the former plots nos. 100 and 102 respectively – both including parts of plot no. 2943/6 – were instituted by ten individuals ("the claimants") in respect of property confiscated from their predecessor and by the applicants in respect of property confiscated from Mr K.S.

B. Restitution proceedings instituted by the claimants

7. On 7 December 2001 the claimants submitted a request to the Restitution Commission of the Ministry of Finance ("the Restitution Commission") for the restitution of several plots (those comprising former plot no.100) – including part of plot no. 2943/6, the surface area of which was 2,260 sq. m. – that had been confiscated from their late predecessor. On 24 June 2002 the Restitution Commission granted the restitution claim in the relevant part and returned the relevant part of plot no. 2943/6 to the claimants. The restitution order was based on the report – dated 22 February 2002 – of an on-site examination carried out on 20 February 2002 by three representatives of the competent body within the Ministry of Finance. In the relevant part, the restitution order stated that:

> "...an on-site inspection of plots nos. 2943/3 and 2943/6 was carried out... and established that the land in question was undeveloped building land, but that preliminary construction work had been undertaken, the legal basis of which should be determined".

8. The relevant parts of the report of 22 February 2002, which was submitted in the case-file, stated *inter alia*:

> "The former plot no. 100 comprised parts of new plots nos. 2943/3 and 2943/6 and 6798 on which preparatory construction work had begun: on the day the examination was carried out, the construction site was fenced off and initial digging had started ...
>
> According to cadastral records (*катастаром на недвижности*), plots nos. 2943/3 and 2943/6 are recorded in land register (*имотен лист*) no. 30165 as an orchard ... and as undeveloped building land belonging to (a company) G.D.
>
> Since preparatory construction work has begun on the site and there is no information as to its legal basis, we consider that the [Restitution Commission] should examine the circumstances in order to decide whether the land in question could be returned or not, given the fact that no buildings have been constructed on the plot."

9. After the restitution order had become final, the public prosecutor and the Solicitor General (*Јавен Правобранител*) requested that the

Government Appeal Commission ("the Appeal Commission") declare it null and void (*барање за огласување ништовно*) in the part concerning plots nos. 2943/3 and 2943/6. On 20 November 2003 the Appeal Commission granted the requests, finding that plot no. 2943/6 could not be returned to the claimants since 1) a building permit for the construction of a petrol station had been issued on 16 May 2001 (it became final on 2 June 2001), namely, before the restitution claim was submitted and 2) according to an on-site examination carried out on 22 February 2002, construction work had started on the plot in question.

10. On 5 November 2004 the Supreme Court, relying on sections 20 and 72 of the Restitution Act (see paragraphs 26 and 32 below) quashed the Appeal Commission's decision, stating *inter alia*:

> "... since the entry into force of the Restitution Act, no changes of fact or law regarding a property are allowed. In practical terms this means that since the entry into force of the Restitution Act, a property subject to restitution cannot be disposed of, no construction work can be carried out on it ... and no decisions conferring rights on third persons can be made in respect of that property ... the only legal issue of relevance for the merits of a restitution claim is the state of the property, actual and legal, at the time when the Restitution Act entered into force. Any changes, in fact or law, to that property made after the entry into force of the Act are irrelevant ..."

11. Consequently, the court found it irrelevant that the building permit for the construction of a petrol station pre-dated the claimants' restitution claim. It ruled that the relevant part of plot no. 2943/6 should therefore be restored into the claimants' possession since it was undeveloped when the Restitution Act entered into force. It remained undeveloped after the restitution claim was submitted (7 December 2001), as was clear from the on-site examination report of 22 February 2002. In such circumstances, the court held that the plot had been correctly returned to the claimants, under section 28(2) of the Restitution Act (see paragraph 28 below).

12. The public prosecutor challenged this decision by means of a request for a review of its legality (*барање за заштита на законитоста*). On 12 December 2005 the plenary session (*општата седница*) of the Supreme Court dismissed the public prosecutor's request and upheld the judgment of 5 November 2004, stating *inter alia*:

> "... the court correctly held that the construction work noted in the on-site examination report of 22 February 2002 does not signify that the plot in question constituted developed building land within the meaning of the Building Land Act ... Consequently, having regard to the date of entry into force of the Restitution Act and the fact that the plot in question was undeveloped, the court correctly decided that there were legal grounds for title to the plot in question to be restored under section 20 of the Restitution Act ..."

13. On 16 May 2006 the Appeal Commission again declared the restitution order of 24 June 2002 null and void. On 22 December 2006 the Supreme Court quashed this decision again, instructing the administrative body to comply with its judgment.

14. On 22 March 2007 the Appeal Commission refused the requests of the public prosecutor and the Solicitor General for the restitution order of 24 June 2002 to be declared null and void. On 27 March 2008 the Administrative Court (*Управен суд*), which, under newly adopted legislation, had become competent to decide such issues, dismissed an appeal on points of law submitted by the Solicitor General (*тужба за управен спор*). The court endorsed the reasoning given in the Supreme Court's judgment of 5 November 2004. Referring to the preparatory construction work indicated in the on-site examination report of 22 February 2002, it also stated that any further construction work on the plot in question had been carried out contrary to section 72 of the Restitution Act.

C. Restitution proceedings instituted by the applicants

15. On 6 March 2002 the applicants requested the restoration of former plot no. 102, which included part of plot no. 2943/6, confiscated from the late Mr K.S. (the surface area of this part was 1,449 sq. m).

16. On 27 December 2003 the Restitution Commission delivered a partial decision (*делумно решение*) by virtue of which the undeveloped plots were returned to the applicants and compensation was awarded for the plots which had meanwhile been developed. It also ruled that a separate decision would be given concerning the relevant part of plot no. 2943/6. As indicated in this decision, it replaced a decision of 9 September 2003 in which the Restitution Commission had, *inter alia*, restored the relevant part of plot no. 2943/6 to the applicants (this latter decision, which was not submitted by the parties, was set aside by the Appeal Commission upon an appeal by the Solicitor General).

17. In its decision of 27 December 2003, the Restitution Commission further referred to a report issued by the State Geodetic Institute (*Државен Завод за геодетски работи*) on 5 August 2002 at the request of the Ministry of Finance. In the report the State Geodetic Institute identified, on the basis of an on-site examination carried out in the presence of a representative of the Restitution Commission, the plots of land under the new land register that comprised the former plot no. 102. Given the plots of land that are referred to in the report, it is obvious that it was issued in connection with the applicants' restitution claim. The relevant parts of this report stated that:

> "According to cadastral records ...
>
> Plots nos. 2943/3 and 2943/6 are recorded in land register no. 30165 as follows: plot no. 2943/3 as orchards ... and plot no. 2943/6 as undeveloped building land, the total surface area of which was 3,970 sq. m., belonging to G.D."

18. The Restitution Commission also referred to an examination carried out on-site on 10 December 2003 (the report of which was not submitted in

evidence) according to which petrol tanks had been installed on the relevant part of plot no. 2943/6 (*вкопани цистерни за гориво*). The Commission also quoted a letter of 22 December 2003 in which the Ministry of Transport and Communications confirmed that proceedings for obtaining documents relevant to the construction work on plot no. 2943/6 were still pending. Given the fact that the administrative proceedings for obtaining documents for the construction work were pending, the Restitution Commission ruled that the applicants' claim regarding the relevant part of plot no. 2943/6 would be decided by means of a separate decision. This decision became final on 26 February 2004.

19. On 3 March 2004 the Restitution Commission granted the applicants' restitution claim concerning the relevant part of plot no. 2943/6 and awarded them monetary compensation in State bonds. Relying on an "additional on-site examination" (*дополнителен увид на лице место*) of 10 December 2003, the Restitution Commission found that the relevant part of plot no. 2943/6 had been developed, namely that part of a petrol station had been built on it.

20. The applicants appealed against this decision, arguing that the Restitution Commission had erred regarding both the facts and the law, that it had based its decision on the on-site inspection report of 10 December 2003, and that it had not provided any evidence regarding the timing or legality of the construction of the petrol station. They further argued that the plot in question had been disposed of contrary to section 72 of the Restitution Act (see paragraph 32 below). They claimed restoration of title to the relevant part of plot no. 2943/6, as was the case with the claimants who had obtained title to the remainder of that plot. In this connection they referred to the Supreme Court's judgment of 5 November 2004 (see paragraph 10 above).

21. On 27 February 2006 the Appeal Commission dismissed the applicants' appeal and confirmed the Restitution Commission's decision of 3 March 2004. It found that the Restitution Commission had correctly established that the relevant land had been developed, as was apparent from the on-site examination report of 10 December 2003. The building permit for the construction of the petrol station of 16 May 2001 (upheld by the Supreme Court on 20 March 2003) was not to be considered a legal measure or unilateral declaration within the meaning of section 72 of the Restitution Act. It was a decision taken by a competent body at the request of a private company, which, as a user of an undeveloped plot of a State-owned land (*корисник на градежно неизградено земјиште во државна сопственост*), had the right to construct the petrol station in compliance with local urban planning rules. Referring to section 27(2) of the Restitution Act, the Appeal Commission found that the Restitution Commission had correctly applied sections 37 and 38 of the Restitution Act (see paragraphs 29 and 30 below). It stated that:

> "What needs to be examined is whether confiscated agricultural land (as in the present case) was undeveloped building land when the restitution claim was submitted but not when the Restitution Act entered into force. Both the impugned decision and the appeal confirm that the restitution claim was submitted on 6 March 2002 and that the building permit for the construction of the petrol station was dated 16 May 2001. [The applicants] neither suggest nor is there any evidence in the case file that the construction of the object had not started before the restitution claim was submitted. On the contrary, the on-site examination carried out by the Restitution Commission on 10 December 2003 confirms that part of a petrol station had been built on this construction land."

22. The applicants challenged this decision by way of an appeal on points of law in which they argued that the plot in question had been undeveloped when they submitted the restitution claim. In this connection they referred to the on-site examination of 22 February 2002, which had been carried out only twelve days before their restitution claim. They further submitted in evidence copies of several letters that they had sent to the competent authorities and the investor requesting termination of the construction work pending the outcome of the restitution proceedings. They also submitted in evidence certain court judgments, on the basis of which the building permit of 16 May 2001 was no longer final. They further argued that in any event the fact that the building permit of 16 May 2001 pre-dated their restitution claim was irrelevant for the reasons advanced in the Supreme Court's judgment of 5 November 2004. The applicants requested that the court follow, in their case, the Supreme and Administrative Courts' judgments delivered in the restitution proceedings instituted by the claimants concerning the same plot (no. 2943/6), in order to ensure consistent application of the law.

23. On 26 June 2008 the adjudicating panel of the Administrative Court with the same composition as the panel that adopted the judgment of 27 March 2008 (see paragraph 14 above) dismissed the applicants' appeal and ruled, for the same reasons advanced by the Appeal Commission, that the plot in question could not be restored into the applicants' possession. This judgment was served on the applicants on 1 September 2008.

24. On 29 May 2009 the Administrative Court dismissed the applicants' request for the proceedings to be reopened, finding that the judgment of 27 March 2008 had been delivered in a different set of proceedings and accordingly could not serve as a legal ground for a different decision in the applicants' case. Furthermore, that judgment could not be regarded as new evidence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Restitution Act, consolidated version, published on 22 May 2000 (*Закон за денационализација, пречистен текст*)

25. Section 13 of the Restitution Act entitles former owners and their heirs recognised under inheritance rules to claim restitution. Restitution can be claimed by a person who had Macedonian nationality at the time when the Act entered into force.

26. Sections 20, 27 and 28 (see below) are specified under the Chapter headed "Restoration of possession" (*враќање во сопственост).* Section 20 provides that property is to be restored, fully or in part, in the state which it was in at the date of entry into force of the Act. Property can be restored in part if the claimant consents thereto and if it is feasible.

27. Under section 27, if the original purpose underlying the confiscation of agricultural land has not been achieved, or if that purpose has been achieved but the land was undeveloped at the time when the restitution claim was submitted, the claimant can seek to have title to that land restored to him or her, or obtain other similar agricultural land or be awarded compensation.

28. Section 28(2) provides that title to building land is to be restored if the purpose underlying the confiscation has not been achieved, or if that purpose has been achieved but the land was undeveloped at the time when the restitution claim was submitted.

29. Sections 37 and 38 are specified under the Chapter headed "Compensation" (*надоместок).* Under section 37, compensation can be awarded for property that cannot be restored. The state of the property at the time of confiscation is taken as the basis for calculating the amount of compensation.

30. Under section 38, another property of the same type or State-owned shares can be awarded as compensation for property that cannot be restored. Otherwise, State bonds are awarded.

31. Section 63(1) provides that the rules governing reinstatement of property into its previous state (*враќање во поранешна состојба*) and renewal of proceedings (*обнова на постапката*) are inapplicable to restitution proceedings.

32. Section 72(1) and (2) ("transitional and final provisions", *преодни и завршни одредби)* provides that property which is the subject of restitution cannot be disposed of since the entry into force of the Act. Legal measures and unilateral declarations taken contrary to subsection (1) are null and void.

B. The Building Land Act of 2001 (*Закон за градежното земјиште*)

33. Under section 3(2) of the Building Land Act, developed building land was land on which a structure of a permanent nature had been built in accordance with the law.

C. Administrative Dispute Proceedings (*Закон за управните спорови*), Official Gazette no. 62/2006

34. Under section 43(7) of the Administrative Disputes Act, a party to proceedings which ended with a judgment or decision can seek to have those proceedings re-opened on the basis of a court decision.

35. Section 44(1) provides that re-opening can be sought within thirty days counting from the date on which the party concerned learnt about the grounds for re-opening. Under subsection 2 of this provision, re-opening cannot be requested if over five years have elapsed from the date on which the decision became final.

D. Relevant domestic practice

36. The applicants submitted copies of decisions delivered between April 2004 and July 2008 in which the Restitution Commission had restored to third parties title to parts of plots nos. 2943/1 and 2943/3, which were adjacent to plot no. 2943/6.

37. They also provided a copy of a judgment of the Higher Administrative Court of June 2012 concerning the partial extraordinary quashing of the restitution order of 24 June 2002 (see paragraph 7 above). It concerned plot no. 2943/12, which was partly occupied by the same petrol station as in the applicants' case. The Higher Administrative Court stated, *inter alia*, that the Restitution Commission (which automatically set aside its order of 24 June 2002) should have taken into consideration the established facts and legal opinion expressed in the judgments of the Supreme and Administrative Courts delivered earlier in the case, as well as the detailed urban plans that had been valid when the restitution claim was submitted.

38. The Government submitted a copy of a judgment of the Supreme Court of 20 June 2002 (*У.бр.713/2002*), delivered in restitution proceedings, in which it remitted a case for re-examination and ordered the administrative authorities to carry out a fresh on-site examination in order to establish, as required under section 28 of the Restitution Act, whether the land in question had been undeveloped when the restitution claim was submitted. The Government submitted copies of several judgments delivered between May 2009 and April 2010 in which the Administrative

Court, which had jurisdiction in restitution matters, ordered fresh on-site examination or inspection of the urban plans that had been valid when the restitution claims were submitted (*У.бр.3419/2007; У.бр.757/2009; У.бр.2665/2009* and *У.бр.3130/2009*).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO.1 TO THE CONVENTION

39. The applicants complained that the refusal of the domestic authorities to transfer title to the relevant part of plot no. 2943/6 to them amounted to a violation of their rights protected under Article 1 of Protocol No. 1 to the Convention, 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. The parties' submissions

1. The Government

40. The Government submitted that States were free in specifying the conditions under which they agreed to restore property rights to former owners. In the present case, those conditions were specified by means of the Restitution Act and concerned claimants as well as the state of the property of which restitution was claimed.

41. Title to confiscated property was not restored automatically but rather each restitution claim was decided on an individual basis. The Restitution Act provided for two cumulative requirements for restoration of title to confiscated land: (a) the land in question had to be undeveloped at the time the restitution claim was submitted and (b) no law or other legal instrument valid at the time the restitution claim was submitted provided for construction of objects of public interest. In order to establish whether those requirements were met at the time the restitution claim was submitted, the competent authorities carried out an on-site examination and drew up a report. Until such an examination had been carried out, the claimants had no "legitimate expectation" of obtaining title to the property concerned.

42. In the present case, the applicants' claim to title to the relevant part of plot no. 2943/6 could not be regarded as constituting "assets" in respect of which they had a "legitimate expectation of obtaining effective enjoyment of a property right". This was the case because domestic case-law was inconsistent as regards the time when the above described requirements had to be satisfied. In this respect, domestic case-law identified three different dates as relevant: the state of the land on the date when the Restitution Act entered into force, the state of the land on the date when a restitution claim was submitted (as was the case with the claimants), and the date when the on-site examination was carried out. The last-named practice had been the one applied in the applicants' case. Given the above inconsistency, the applicants could not claim to have a "legitimate expectation" of obtaining title to the land in question.

2. The applicants

43. The applicants submitted that all the plots of land which formed part of parcel no. 2943 had been returned into the possession of the former owners or their successors (see paragraph 36 above). The applicants had met all the statutory requirements and accordingly had a legitimate expectation of obtaining title to the relevant part of plot no. 2943/6. In this connection they argued that they had satisfied the two conditions provided for by law, namely that the land in question had been undeveloped when the restitution claim had been submitted and that no object of public interest had been intended for construction on that land. They reiterated that the relevant part of plot no. 2943/6 had been vacant and undeveloped and owned by the State when they had lodged the restitution claim. The subsequent construction noted in the report of 10 December 2003 had been irrelevant as it had post-dated the restitution claim. It concerned a private petrol station, which was not of public interest, so there was no justification for the authorities' refusal of their claim. Accordingly, the conclusion of the national authorities had been arbitrary.

44. The domestic court judgments which the Government submitted (see paragraph 38 above), although not final, confirmed that the assessment as to whether or not land had been developed had been carried out taking into account the state of that land on the date the restitution claim was submitted. Any subsequent legal or factual changes to the land were of no relevance.

B. The Court's assessment

1. Admissibility

45. Having regard to the parties' arguments, the Court considers that the question of whether any "possession" exists in the present case (incompatibility *ratione materiae*) is inextricably linked to the question of

whether there has been an interference, which is a matter to be examined in the context of the Court's consideration of the merits of the case. It therefore joins the question to the merits of the applicants' property complaint under Article 1 of Protocol No. 1. It further considers that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

2. Merits

46. The Court reiterates that Article 1 of Protocol No. 1 does not guarantee the right to acquire property. An applicant can allege a violation of this provision only in so far as the impugned decisions related to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. By way of contrast, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, § 69, ECHR 2002-VII).

47. Article 1 of Protocol No. 1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. On the other hand, once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

48. The Court notes that the present case concerns the applicants' restitution claim, in which they sought to recover possession of the relevant part of plot no. 2943/6 confiscated from their late predecessor. The Court needs to determine whether or not that claim constituted an "asset", that is to say whether it was sufficiently established to attract the guarantees of Article 1 of Protocol No. 1.

49. The Restitution Act, on which the applicants' claim was based, provided for an entitlement to ownership of property subject to restitution. However, such entitlement was subject to certain conditions specified by the Restitution Act. The Government (see paragraph 41 above) argued and the applicants agreed (see paragraph 43 above) that the following statutory

requirements had to be satisfied in the present case in order for the applicants to obtain title to the relevant land: (a) the land had to be undeveloped when the restitution claim was submitted and (b) no valid legal instrument at the time the restitution claim was submitted provided for the construction of objects of public interest. In the absence of any dispute between the parties regarding the second requirement, the Court will focus its examination on the question of whether the applicants' claim for title to the respective land satisfied the first requirement, namely whether that land was undeveloped at the time the restitution claim was submitted. The answer to this question will be decisive for the applicants' complaint under this head.

50. A negative answer to this question will lead the Court to the finding that the State's refusal to grant the applicants' claim to title to the property did not amount to an interference with their property rights, given that they would not have a proprietary interest falling within Article 1 of Protocol No. 1. However, by contrast, if the Court finds that the applicants satisfied this requirement, then that refusal will be regarded as an interference with the applicants' proprietary interests which was not in accordance with the law as required under the Convention. Such a conclusion will make it unnecessary for the Court to ascertain whether a fair balance has been struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights in finding a violation of Article 1 of Protocol No.1 (see, *mutatis mutandis*, *Damjanac v. Croatia*, no. 52943/10, §§ 88 and 89, 24 October 2013).

51. It is not disputed that the applicants' restitution claim to title to the relevant land was submitted on 6 March 2002. The Restitution Commission, in its decision of 27 December 2003, stated that it would decide that claim with a separate decision. It established however that on 5 August 2002 the State Geodetic Institute had carried out an on-site examination in the presence of a representative of the Restitution Commission, in order to identify the land that was the subject of the restitution claim. On that occasion, the State Geodetic Institute, relying on cadastral records, had established that the relevant part of the land (part of plot no. 2943/6) had been "recorded in the cadastral records ... as undeveloped" (see paragraph 17 above). The Restitution Commission further referred to the on-site examination report of 10 December 2003, according to which petrol tanks had been installed on the land (see paragraph 18 above). With a decision delivered on 3 March 2004, which was nearly two years after the restitution claim was submitted, the Restitution Commission refused to grant the applicants' claim to title and instead awarded them compensation in State bonds. It ruled this way since the relevant land "had been developed" and could not therefore be restored into their possession. This finding was based on the "additional on-site examination" of 10 December 2003 (see paragraph 19 above).

52. In the ensuing proceedings, the applicants complained that the land in question had been undeveloped at the time the restitution claim was submitted, which, as discussed above, was a requirement specified with the Restitution Act. In support of that argument, the applicants relied on the admitted evidence and court judgments delivered in the restitution proceedings instituted by the claimants, which concerned, *inter alia*, part of the same plot no. 2943/6. They referred to the on-site examination report of 22 February 2002, according to which "plot no. 2943/6 ... was undeveloped building land, but that preparatory construction work had begun ..." This report, which pre-dated the applicants' restitution claim, further confirmed that "plot no. 2943/6 [was] recorded in the cadastral records as ... undeveloped building land" (see paragraph 8 above). In this latter context, the report was consistent with the report of the State Geodetic Institute of 5 August 2002, which post-dated the applicants' claim and was admitted in evidence in the impugned proceedings (see paragraph 17 above). The applicants also referred to the court judgments delivered in the claimants' case at three judicial instances, including the plenary session of the Supreme Court. In those judgments, the courts drew two important conclusions which were of direct relevance for the applicants' case: firstly, that it was irrelevant that the building permit of 16 May 2001 for the construction of the petrol station pre-dated the claimants' restitution claim (as was the case with the applicants' claim) (see paragraph 11 above) and secondly, that the preparatory construction work undertaken on the land "[did] not signify that the plot in question was developed within the meaning of the Building Land Act ..." (see paragraph 12 above). The above had led the highest judicial authorities to conclude that the land should be returned into the claimants' possession given the fact that it had been undeveloped when the Restitution Act had entered into force and it had remained undeveloped after the restitution claim was submitted (see paragraph 11 above).

53. The Appeal Commission and the Administrative Court dismissed the applicants' appeals and upheld the Restitution Commission's decision of 3 March 2004. In so doing, they again relied on the on-site examination of 10 December 2003 to confirm that the relevant land "had been developed". Furthermore, they referred to the building permit of 16 May 2001 for the construction of the petrol station and concluded that "The [applicants] neither suggested nor was there any evidence in the case-file that the construction of [the petrol station] had not started before the restitution claim was submitted".

54. In such circumstances, the Court considers that the applicants' claim to title to the respective land was dismissed in proceedings in which the national authorities disregarded the relevant facts brought to their attention and the existing practice. They overlooked the available evidence according to which the land was undeveloped at the time the applicants' claim was submitted. In this connection the Court underlines that both the on-site

examination report of 22 February 2002 (pre-dating the applicants' claim) and the report of the State Geodetic Institute dated 5 August 2002 (post-dating their claim), confirmed that the land was undeveloped at the time. Both documents, relying on cadastral records, were issued by competent State bodies and the fact that the report of 22 February 2002 was drawn up in the course of other proceedings is irrelevant.

55. The conclusion reached in the applicants' case that the land had been developed was based on the on-site examination report of 10 December 2003. As argued by the Government, this approach considered as decisive the state which the property was in when the on-site examination was carried out (see paragraph 42 above). The Court cannot accept this approach since it was not based on any valid legal instrument or domestic practice. In this connection it notes that under the Restitution Act (see paragraphs 27 and 28 above), the entitlement to ownership of land that is subject to restitution was dependent on the state of the property at the time the restitution claim was submitted. The Government agreed with that (see paragraph 41 above). There was no statutory provision that entitled the authorities to consider as decisive the state of property at the time of the on-site examination, which in the applicants' case was carried out a year and nine months after the applicants had brought their claim. Furthermore, this approach was contrary to established domestic practice. In this connection the Court is not persuaded by the Government's argument that the domestic case-law was inconsistent in this respect. The court judgments delivered in the restitution proceedings brought by the claimants referred to the state of the property at the time when the Restitution Act entered into force. However, they nevertheless relied on the state of property at the time the claim was submitted in order to restore the land into the claimants' possession under section 28(2) of the Restitution Act (see paragraph 11 above). The same practice was applied in domestic case-law post-dating the applicants' case (see paragraph 38 above). Accordingly, the practice applied in the applicants' case regarding the relevant date for assessing whether or not the respective land was undeveloped "at the time the claim was submitted" was a deviation from existing case-law and represented an arbitrary way for the domestic authorities to determine the applicants' claim.

56. In this respect the Court would like to add that – notwithstanding the fact that an on-site examination of a land subject to restitution is important for assessing whether it was undeveloped at the time the restitution claim was submitted – it finds it unreasonable that the applicants' entitlement to ownership thereof was determined on the basis of an examination carried out, as noted above, a considerable time after their submission of the restitution claim. In the Court's view, the failure of the authorities to carry out such an examination within a reasonable time should not count against the applicants, as the latter would otherwise suffer negative consequences

for inactivity on the part of the State authorities for which they bore no responsibility.

57. Similarly, the authorities' reliance on the building permit of 16 May 2001, as a ground for refusing the applicants' claim to title was contrary to the already-established practice according to which the mere existence of such a permit (of which the validity was disputed by the applicants) prior to the restitution claim (as in the applicants' case) was irrelevant for the proprietary entitlement to ownership specified under the Restitution Act (see paragraphs 11 and 14 above). Apart from a brief reference to the building permit, the authorities did not explain why the applicants' case was decided contrary to existing case-law. In this connection the Court reiterates that well-established case-law imposes a duty on the authorities to make a more substantial statement of reasons justifying the departure (see *Atanasovski v. the former Yugoslav Republic of Macedonia*, no. 36815/03, § 38, 14 January 2010).

58. Lastly, the authorities referred to "the absence of evidence that the construction of [the petrol station] had not started before the restitution claim was submitted". The Court notes that the Restitution Act did not contain any provision specifying that land would be regarded as developed if construction work had begun. Furthermore, the Court was not presented with any evidence to the effect that any other valid instrument or established practice at the time provided for such a rule. It observes, however, that – by means of the judgment delivered on 12 December 2005 – the plenary session of the Supreme Court held that preparatory construction work did not signify that land had been developed within the meaning of the Building Land Act (see paragraphs12 and 33 above). The Administrative Court, which decided the applicants' case on 26 June 2008, could not have been unaware of that practice (see paragraphs 14 and 22 above).

59. In such circumstances, the Court considers that the summary reasons provided by the domestic authorities, without any specific reference to the applicants' complaints, the relevant domestic courts' case-law, or any domestic authorities' practice (see, by contrast, *Jantner v. Slovakia*, no. 39050/97, § 30, 4 March 2003) is not sufficient to enable the Court to accept the Government's argument that the applicants were not entitled to obtain title to the land in question (see, by contrast, *ibid.*, cited above, § 33).

60. In view of the foregoing, the Court considers that when refusing the applicants' claim to title to the relevant part of plot no. 2943/6 on grounds that were contrary to valid rules and established case-law, the competent authorities interfered with the applicants' property interests in breach of the principle of lawfulness and accordingly in a manner incompatible with their right to peaceful enjoyment of their possessions.

61. The Court therefore rejects the Government's preliminary objection it had previously joined to the merits (paragraph 47 above) and finds that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. The applicants complained of inconsistent practice in violation of Article 6 of the Convention. They also relied on Articles 8 and 13 of the Convention without providing any explanation of the alleged violations under these provisions.

63. The Court has examined these complaints. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

65. 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

66. The applicants claimed 300,000 euros (EUR) jointly in respect of pecuniary damage and EUR 10,000 each in respect of non-pecuniary damage for the emotional suffering and psychological pressure sustained during the impugned proceedings.

67. As to the pecuniary damage claimed, the applicants stated that it represented the current market value of the relevant part of plot no. 2943/6. In support of this claim, they submitted copies of two contracts of sale, certified by a notary public in July 2010 and September 2011, according to which parts of plot no. 2943 were sold at the price of EUR 250 and EUR 208.33 per sq. m. respectively. Their claim was based on the lowest market price, notwithstanding the fact that the selling price of State-owned land in the same area was EUR 700 per sq. m., this latter price being variable and determined by the Government. In support they submitted an extract from a Decree concerning the price of State-owned building land offered for sale or lease (Official Gazette no. 113/2010). As stated by the applicants, they claimed pecuniary damage given the fact that the Restitution Act did not provide for re-opening of the proceedings in the event that the Court were to find a violation of the Convention.

Accordingly, any violation would not entail title to the relevant land being restored to them.

68. The Government contested the applicants' claims as unsubstantiated and excessive. They further alleged that there had been no causal link between the pecuniary damage claimed and the alleged violation. They also submitted that section 43(7) of the Administrative Proceedings Act (see paragraph 34 above) clearly provided for the possibility of re-opening administrative proceedings on the basis of a judgment of the Court. The fact that re-opening was available in restitution proceedings was confirmed in the present case (see paragraph 24 above).

69. Given the circumstances of the instant case, the Court considers that the question of pecuniary damage is not ready for decision. It is therefore necessary to reserve the matter, due regard being had to the possibility of an agreement between the respondent State and the applicants (Rule 75 §§ 1 and 4 of the Rules of Court).

70. On the other hand, it considers that the applicants must have sustained non-pecuniary damage, such as distress resulting from the lack of respect for their rights guaranteed under Article 1 of Protocol No. 1. Ruling on an equitable basis, it awards the applicants EUR 3,000 each in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

71. The applicants did not seek reimbursement of costs and expenses. Accordingly, the Court does not award any sum under this head.

C. Default interest

72. 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. *Joins* to the merits of the applicants' property complaint under Article 1 of Protocol No. 1 the Government's objection and *rejects* it;

2. *Declares* the applicant's complaint under Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

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

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Holds* that the question of the question of pecuniary damage under Article 41 of the Convention is not ready for decision, and accordingly,

(a) *reserves* the said question in whole;

(b) *invites* the Government and the applicants to submit, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;

(c) *reserves* the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 23 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President