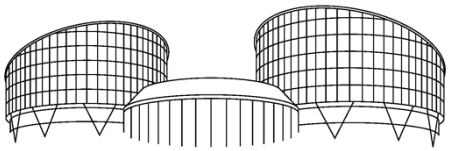

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

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

(Application no. 14174/09)

JUDGMENT
(*Just satisfaction*)

STRASBOURG

7 February 2019

FINAL

07/05/2019

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:

Linos-Alexandre Sicilianos, *President,*
Krzysztof Wojtyczek,
Armen Harutyunyan,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski,
Gilberto Felici, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having deliberated in private on 15 January 2019,

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. In a judgment delivered on 30 September 2014 ("the principal judgment"), the Court held that there had been a violation of Article 1 of Protocol No. 1 to the Convention in that the authorities had dismissed (with a final judgment of 2008) the applicants' claim for restoration of a plot of land (plot no. 2943/6 with a surface area of 1,449 sq. m., confiscated from their late predecessor) into their possession in breach of the principle of lawfulness (see *Stojanovski and Others v. the former Yugoslav Republic of Macedonia*, no. 14174/09, § 60, 23 October 2014).

3. Under Article 41 of the Convention the applicants sought compensation of both pecuniary and non-pecuniary damage. As regards the pecuniary damage, the applicants claimed 300,000 euros (EUR) jointly, which according to them corresponded to the then market value of the land. In support of that claim, they referred to two contracts of sale of July 2010 and September 2011 signed by private parties, according to which two plots of land in the same area as the land in question (non-building and building land) had been 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 intended for commercial and business purposes, as determined in

the Decree concerning the price of State-owned building land offered for sale or lease ("the 2010 Decree", Official Gazette no. 113/2010), was EUR 700 per sq. m. This latter price concerned direct sale (*непосредна спогодба*) of State-owned building land and as stated by the applicants, was variable and determined by the Government. The Government contested those claims as unsubstantiated and excessive. They further referred to the possibility of reopening the restitution proceedings on the basis of a judgment of the Court.

4. Since the question of the application of Article 41 of the Convention as regards pecuniary damage was not ready for decision, the Court reserved it and invited the Government and the applicants to submit, within three months from the date on which the judgment became final, their written observations on that issue and, in particular, to notify the Court of any agreement that they might reach (see the principal judgment, § 69 and point 5 of the operative provisions). The Court awarded EUR 3,000 to each applicant, plus any tax chargeable, in respect of non-pecuniary damage. In the absence of a claim by the applicants for reimbursement of costs and expenses, the Court made no award under that head.

5. The applicants and the Government failed to reach an agreement as regards the pecuniary damage during the time-limit fixed. The parties accordingly filed submissions concerning the question of pecuniary damage under Article 41 of the Convention.

THE LAW

6. 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

1. The parties' submissions

7. The applicants maintained their position seeking payment of EUR 300,000 jointly in respect of pecuniary damage. They reiterated their arguments (set out at paragraph 3 above) and further referred to the Decree concerning the price of State-owned building land offered for sale or lease ("the 2014 Decree", Official Gazette no. 134/2014) according to which the selling price, again regarding direct sale of State-owned building land in the same area intended for collective housing and commercial and business purposes, was EUR 275 per sq. m. Lastly, they maintained that the

possibility of reopening the restitution proceedings was not available. In this connection they submitted a copy of a final judgment by the Higher Administrative Court (*Uz-1.no.352/2014*) regarding restitution proceedings that they had instituted in respect to different land according to which reopening of such proceedings was not allowed under section 63 of the Restitution Act (paragraph 31 of the principal judgment).

8. The Government submitted that the land in question (plot no. 2943/6) could not be transferred into the applicants' possession because a third person had title to it and there were underground installations and other facilities on the land serving a petrol station owned by another private person.

9. They further contested the applicants' pecuniary claim as excessive and disproportionate to the value of the land in 2001 and its current market value. In this connection they argued that any pecuniary compensation should be calculated on the basis of the land's market value on the date when the applicants had submitted the restitution claim. The burden of proof in that respect was on the applicants. The evidence submitted by the applicants (paragraph 3 above) concerned land situated alongside a main road which could be used for various commercial activities, unlike the plot in question which could only be used for petrol-station-related activities. Lastly, they reiterated their arguments (see paragraph 3 above) that reopening the restitution proceedings was the most appropriate avenue to resolve the issue of material damage. If the proceedings were reopened, the courts would have examined the possibility provided for by the Restitution Act (paragraph 30 of the principal judgment) that another plot of land, with similar characteristics and value to plot no. 2943/6, be transferred into the applicants' possession.

2. The Court's assessment

10. As the Court has held on a number of occasions, a judgment in which it finds a breach imposes on the respondent State a legal obligation to put an end to the breach and make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach. The Contracting States are in principle free to choose the means whereby they will comply with a judgment in which the Court has found a breach. This discretion as to the manner of execution of a judgment reflects the freedom of choice attached to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (Article 1). If the nature of the violation allows of *restitutio in integrum* it is the duty of the State held liable to effect it, the Court having neither the power nor the practical possibility of doing so itself. If, however, national law does not allow – or allows only partial – reparation to be made for the consequences of the breach, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate

(see *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 90, 22 December 2009, and *Kurić and Others v. Slovenia* (just satisfaction) [GC], no. 26828/06, §§ 79 and 80, ECHR 2014). The Court enjoys certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest. In particular, if one or more heads of damage cannot be calculated precisely, the Court may decide to make a global assessment (see *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99 and 3 others, § 7, 24 April 2008). In so doing it can have recourse to equitable considerations (see *Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, § 79, 28 November 2002).

11. The basis on which the Court proceeds as regards pecuniary damage depends on the nature of the breaches found (see *Ünsped Paket Servisi SaN. Ve TiC. A.Ş. v. Bulgaria* (just satisfaction), no. 3503/08, § 13, 24 November 2016). Illegal and arbitrary dispossessions of property in principle justify *restitutio in integrum* and, in the event of non-restitution, payment of the up-to-date full value of the property (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, ECHR 2001-I).

12. In its judgment on the merits in the present case the Court found that the interference complained of did not satisfy the condition of lawfulness (see paragraph 2 above). In particular it held that the authorities' findings that the land in question had been developed and accordingly could not have been restored into the applicants' possession constituted an arbitrary determination of the applicants' claim in disregard of the relevant facts and existing practice (see the principal judgment, §§ 54 and 55).

13. Consequently, such interference equated unlawful dispossession of property and justifies *restitutio in integrum*. However, the Court notes that the applicants did not request restitution of the plot in question and such restitution is moreover impossible (see paragraph 8 above). Accordingly, reparation for pecuniary damage must result in the closest possible situation to that which would have existed if the breach in question had not occurred (see *Vistiņš and Perepjolkins v. Latvia* (just satisfaction) [GC], no. 71243/01, § 33, ECHR 2014).

14. The Court considers that in the circumstances of the present case there are two ways that would put the applicants in a situation as close as possible to the equivalent in which they would have been had there not been a breach of Article 1 of Protocol No. 1., namely transferring another similar land in the applicants' possession or the payment of monetary compensation, which must be reasonably related to the market value of the property at present (see *Todorova and Others*, cited above, § 11).

15. Awarding ownership of "another property of the same type" is provided as alternative "compensation for property that cannot be restored" under section 38 of the Restitution Act (see the principal judgment, § 30).

The Court cannot accept the Government's argument that the applicants should seek to reopen the restitution proceedings for that purpose because it has not been convincingly established that that remedy was available in the present case. Firstly, it is not clear whether reopening is available in restitution proceedings (see the principal judgment, § 7 above and § 24) and secondly, section 44(2) of the Administrative Disputes Act (see the principal judgment, § 35) provides that reopening cannot be requested if a period of over five years has elapsed from the date on which the decision became final. In the present case, the final decision in the restitution proceedings was dated 26 June 2008 (and was served on the applicants on 1 September 2008, see the principal judgment, § 23). In such circumstances, the Court considers that the respondent State should transfer into the applicants' possession another land in the same area which has characteristics and a value that are as close as possible to those of plot no. 2943/6. The value of the State bonds (724,500 MKD)[1] given to the applicants in compensation for plot no. 2943/6 (see paragraph 19 of the principal judgment) will have to be deducted from the value of the substituting land transferred in the applicants' possession under this judgment.

16. Failing such action by the respondent State, the Court holds that it is to pay the applicants, for pecuniary damage, the market value of plot no. 2943/6 (see, *mutatis mutandis*, *Guiso-Gallisay*, cited above, § 96, and *Brumărescu*, cited above, § 23). That the applicants should be awarded compensation corresponding to the market value of the land was not contested by the parties.

17. The Court notes that neither of the parties submitted an expert valuation of the property in issue that would clarify its market value at present. The only evidence submitted to the Court as to how the quantum of the award should be calculated is that which has been presented by the applicants (see paragraphs 3 and 7 above). The Court observes that the sale contracts referred to by the applicants dated 2010 and 2011 and the relevant Government Decrees, 2010 and 2014. As to the Government Decrees, it is to be noted that the applicants pointed out to the selling price set by the Government for direct sale of State-owned building land, which warranted certain conditions. However, it considers noteworthy that both 2010 and 2014 Decrees also provided for the lowest asking price for competitive bidding regarding such a land, which was set, for the relevant area, at EUR 82 (2014 Decree) and EUR 98 (2010 Decree) per sq. m., respectively. In view of the above and in the absence of any other (more recent) information, the Court considers that the figures put forward by the applicants are not fully reliable. In such circumstances, applying the approach defined above (see paragraph 10 above) and having regard to the

1. Equivalent to EUR 12,000.

fact that in the restitution proceedings the applicants were awarded State bonds worth 724,500 MKD, the Court awards the applicants jointly EUR 190,000 in respect of pecuniary damage, plus any tax that might be chargeable.

B. Default interest

18. 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. *Holds* that the respondent State is to transfer into the applicants' possession, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, land in the same area as plot no. 2943/6 whose characteristics and value (less the value of the State bonds awarded to the applicants in the restitution proceedings) are as close as possible to plot no. 2943/6;

2. *Holds* that, in the alternative, should the respondent State fail to comply with the above obligation, the respondent State is to pay the applicants, within the same period of three months, EUR 190,000 (hundred and ninety thousand euros) jointly in respect of pecuniary damage, plus any tax that may be chargeable. This sum is to be converted into the national currency of the respondent State at the rate applicable on the date of settlement;

3. *Holds* that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the sum of EUR 190,000 (hundred and ninety thousand euros) at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 7 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Linos-Alexandre Sicilianos
Deputy Registrar	President