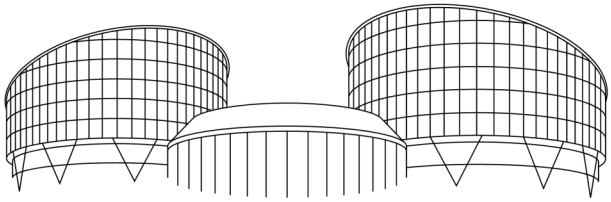

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF LYUBOMIR POPOV v. BULGARIA

(Application no. 69855/01)

JUDGMENT

STRASBOURG

7 January 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Lyubomir Popov v. Bulgaria,

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
Pavlina Panova, ad hoc *judge,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 69855/01) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Lyubomir Milenkov Popov ("the applicant"), on 3 May 2000.

2. The applicant was represented by Mrs N. Sedefova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Kotseva, of the Ministry of Justice.

3. The applicant alleged that the authorities had failed to comply with final judgments and decisions given in the framework of restitution proceedings and had failed to duly recognise and restore his property rights to the properties in respect of which he had sought restitution.

4. On 24 October 2005 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 30 January 2009 the Government appointed in her stead Mrs Pavlina Panova as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1933 and lives in Plovdiv.

7. In 1991 the Bulgarian Parliament adopted the Agricultural Land Act ("the ALA", see for more detail paragraphs 83-95 below) which provided for the restitution of collectivised agricultural land.

1. Restitution of land previously owned by the applicant

(a) Request for restitution of property

8. On 4 March 1992 the applicant requested from the Pazardzhik agricultural land commission ("the land commission" or "the commission") restitution of nine plots of agricultural land which he had previously owned in the area around the village of Govedare, totalling 44,029 square metres (request no. 12004/04.03.1992).

(b) First decision of the land commission

9. By a decision of 18 December 1992 (no. 42\3/18.12.1992) the commission recognised and restored "in actual boundaries" the property rights of the applicant in respect of seven of the plots, in particular those under nos. 1-5, 7 and 8 in his request of 4 March 1992, which totalled 41,299 square metres. The applicant was informed of the decision by a letter of 22 April 1993. The decision was subject to appeal within fourteen days of receipt. As no appeal was lodged against it the decision entered into force.

(c) Second decision of the land commission and the appeal against it

10. Despite the aforesaid decision, the land commission issued a second decision dealing with the same subject matter, which the applicant received by a letter of 28 December 1993. The decision's number was identical with that of the first decision issued by the land commission (see paragraph 9 above).

11. By this decision, however, the commission recognised and restored the property rights of the applicant in respect of only five of the plots he had requested, namely those under nos. 1-5 in his request of 4 March 1992. The commission refused to recognise the property rights of the applicant in respect of plots nos. 7 and 8, with respective areas of 6,600 and 4,000 square metres. The grounds for the refusal were the following:

> "[These properties were] claimed [by means of] a certified declaration despite the existence of a [conflicting] property deed of 1954."

12. The applicant appealed against this decision.

13. By amendment of 1995 to the Agricultural Land Act (section 14 §§ 6 and 7) agricultural land commissions were provided with the power to amend, in certain circumstances, their decisions which had entered into force (see paragraph 85 below).

14. By a decision of 12 September 1995 the Pazardzhik District Court declared null and void the land commission's second decision communicated to the applicant by letter of 28 December 1993 (see paragraph 10 above). The domestic court found, *inter alia*, that:

> "the [land commission] violated the law by adopting decision no. 42\3/18.12.1992 in its version [communicated by] letter no. 668/28.12.1993, [as it] did not have the power to do so. The possibility for the [commission] to amend [its] decisions which have entered into force ... [was introduced] with the [latest] amendment to the [ALA]. ... [The] first administrative act [communicated by letter of 22 April 1993 had] entered into force and had [already] determined the ownership of the properties of ... the applicant, which were [recognised and] restored in their entirety."

15. No appeal was lodged against the decision, so it entered into force on 20 September 1995.

(d) Third decision of the land commission and the appeal against it

16. Despite the aforesaid decision of the District Court, the land commission adopted another decision dealing with the same subject matter.

17. By a decision of 7 December 1995 (no. 48\15/07.12.1995) it readopted the text of its second decision, which had been declared null and void. It expanded its reasoning for refusing to recognise the applicant's property rights in respect of plots nos. 7 and 8 as follows:

> "In connection with the possibility under section 14 §§ 6 and 7 of the [ALA] and the decision of the District Court [of 12 September 1995], the [commission] confirms its refusal: [These properties were] claimed [by means of] a certified declaration despite the existence of a [conflicting] property deed of 1954."

18. On an unspecified date the applicant appealed against this decision.

19. In a final judgment of 26 May 1997 the Pazardzhik District Court declared it null and void. The domestic court found that the commission had failed to justify the grounds for amending its previous decision regarding the same properties, as there had existed no new facts or documents

20. On 3 September 1997 the applicant deposited a copy of the aforementioned judgment with the land commission and insisted that it comply with its first decision of 18 December 1992, which was still in force.

(e) Fourth decision of the land commission and the appeal against it

21. Before the appeal against the commission's third decision was heard, the latter issued another decision dealing with the same subject matter.

22. By a decision of 20 March 1997 (no. 5-A111/20.03.1997) it apparently reiterated its refusal to recognise the applicant's property rights in respect of plots nos. 7 and 8. The applicant appealed against this decision.

23. On an unspecified date in the beginning of 1998, the Pazardzhik District Court heard the applicant's appeal and declared null and void the decision of 20 March 1997. No appeal was lodged against this judgment so it entered into force on an unspecified date.

24. On 8 May 1998 the applicant deposited a copy of the aforementioned judgment with the land commission. He demanded compliance with it and recognition of his property rights in accordance with the first decision of 18 December 1992.

(f) Fifth and sixth decisions of the land commission and the appeal against them

25. Before the appeal against the fourth decision of the land commission was heard, the latter issued another decision dealing with the same subject matter.

26. By a decision of 16 October 1997 (no. 8A055/16.10.1997) it readopted the text of its third decision of 7 December 1995, which had been declared null and void by the Pazardzhik District Court on 26 May 1997 (see paragraphs 17 and 19 above). It expanded its reasoning for refusing to recognise the applicant's property rights in respect of plots nos. 7 and 8 by stating, in addition to the previously used reasoning, the following:

> "[This decision] rescinds decision no. 48\15/07.12.1995 ... in compliance with order no. RD-09-1200 of 28.08.1997 of the Minister of [Agriculture] for a complete revision of the land redistribution plan for the Govedare area.
>
> In compliance with [the decision of 26 May 1997] of the Pazardzhik District Court."

27. The applicant appealed against this decision on 21 November 1997.

28. Instead of forwarding the appeal to the District Court the land commission issued another decision dealing with the same subject matter.

29. By decision of 1 June 1998 (no. 2B175/01.06.1998) it readopted the text of its above-mentioned fifth decision (see paragraph 26 above). It only expanded its reasoning for refusing to recognise the applicant's property rights in respect of plots nos. 7 and 8 by stating, in addition to the previously used reasoning, the following:

> "[This decision] rescinds [the] decision [of 16 October 1997] of the [land commission] in connection with appeal no. 4266/1997 lodged on the basis of § 31 of the [ALA]. The [commission] confirms the basis for its refusal. No new facts or documents have been presented."

30. The applicant appealed against this decision on 16 September 1998.

31. By a letter of 10 September 1998 the applicant complained to the land commission about the numerous decisions it was issuing in respect of

the same properties, of its continual disregard for the judgments in his favour and the constant need for him to appeal against each of the decisions.

32. By a judgment of 8 June 1999 the Pazardzhik District Court declared null and void the fifth and sixth decisions of the land commission, dated 16 October 1997 and 1 June 1998 (see paragraphs 26 and 29 above). The court found that by adopting these two decisions the commission was, in substance, amending its first decision of 18 December 1992 which had entered into force and which it did not have the power to amend.

33. No appeal was lodged against the judgment, so it entered into force on 1 July 1999.

(g) Seventh decision of the land commission

34. Despite the aforementioned judgments of the Pazardzhik District Court the land commission issued a seventh decision dealing partly with the same subject matter.

35. By a decision of 16 September 1999 (no. 7B148/16.09.1999) it recognised and restored the applicant's property rights in respect of plots nos. 6 and 9 in his request of 4 March 1992. It also recognised his property rights in respect of plots nos. 7 and 8, but refused to restore them because of the following:

> "The judgment [of 8 June 1999 of the Pazardzhik District Court], which recognised the [applicant's] property rights, entered into force after the land redistribution plan had been published in the Official Journal.
>
> [This decision] rescinds decision no. 39\11 of 20.11.1992.
>
> [Subject to] compensation under section 10b § 1 of the [ALA]."

36. It is unclear whether the applicant appealed against this decision.

(h) Latest developments

37. By a decision of 23 February 2005 the Pazardzhik Agriculture and Forestry Department (the former land commission) allotted to the applicant another plot in compensation for plot no. 7 and also awarded him compensation bonds. He appears to be satisfied with the compensation received.

38. At the time of the parties' latest communications of 2006 he had not received any compensation for plot no. 8.

2. *Restitution of land previously owned by the applicant's father and by both of his parents*

(a) First request for restitution of property

39. On 4 March 1992 (request no. 12007/04.03.1992) the applicant requested from the land commission the restitution of six plots of

agricultural land which had previously been owned by his father in the area around the village of Govedare, totalling 63,101 square metres. The parties have not specified who the heirs of the applicant's father were; it transpires from the documents that the applicant has three siblings.

(b) First decision of the land commission

40. By decision of 18 December 1992 (no. 42\3/18.12.1992) the commission recognised and restored the property rights of the heirs of the applicant's father in respect of four of the plots, in particular, those under nos. 1, 2, 5 and 6, in his request of 4 March 1992, which totalled 34,401 square metres. The commission refused to recognise the property rights of the heirs of the applicant's father in respect of plots nos. 3 and 4, which totalled 28,700 square metres. The grounds for the refusal were:

> "[Refusal to] recognise the property deeds [presented by] the inheritor – [the documents] are without notary certification for the transfer of the land."

41. On an unspecified date the applicant appealed against this decision.

42. In a final judgment of 29 December 1993 the Pazardzhik District Court quashed the land commission's decision in so far as it concerned plots nos. 3 and 4. It recognised the property rights of the heirs of the applicant's father over those two plots and held that those properties were to be restored through a land redistribution plan. The District Court found, in particular, that the applicant's father had acquired the said properties by adverse possession, so it was immaterial whether the property deeds had been certified by a notary or not.

(c) Second decision of the land commission

43. Before the Pazardzhik District Court had heard the applicant's appeal against the first decision of the land commission, the latter adopted a second decision dealing with the same subject matter.

44. By decision of 17 November 1993 (no. 80\9/17.11.1993) it rescinded its first decision, but then recognised and restored the property rights of the heirs of the applicant's father only in respect of plots nos. 1 and 2 in his request of 4 March 1992, which totalled 20,801 square metres. It refused to recognise the property rights of the heirs of the applicant's father in respect of plots nos. 3-6. The grounds for the refusal were the following:

> "[This decision] rescinds decision no. 42\3 of 18.12.1992 due to the discovery of a technical error. Properties nos. [3 and 4] – [Refusal to] recognise the property deeds [presented by] the inheritor – [the documents] are without a notary certification for the transfer of the land. Properties nos. [5 and 6] – [These properties were] claimed [by means of] a certified declaration despite the existence of [conflicting] property deeds."

45. The applicant was informed of the decision by letter of 20 December 1993. He apparently appealed against it on an unspecified date. It is unclear whether the appeal was examined by the courts.

(d) Third decision of the land commission

46. By a decision of 20 April 1994 (no. 98/17/20.04.1994) the land commission rescinded its second decision (see paragraph 44 above) and recognised and restored the property rights of the heirs of the applicant's father in respect of plots nos. 1 and 2 in his request of 4 March 1992. The commission recognised their property rights in respect of plots nos. 3 and 4, totalling 28,700 square metres, refused to restore those properties "in actual boundaries" and held that they were to be restored through a land redistribution plan. Furthermore, it refused again to recognise the property rights of the heirs of the applicant's father in respect of plots nos. 5 and 6.

47. The grounds for the commission's decision were the following:

> "1. Recognises in compliance with the judgment [of 29 December 1993 of the Pazardzhik District Court].
>
> 2. [This decision] rescinds decision [of the PALC] no. 80\9 of 17.11.1993."

48. The applicant appealed against this decision on an unspecified date. It is unclear whether the appeal was examined by the courts.

49. Apparently, at a later stage the applicant obtained a satisfactory outcome in respect of plots nos. 5 and 6 and does not raise complaints in respect of them.

50. Plots nos. 3 and 4 were partially restored to him in 2000 (see paragraphs 74-76 below).

(e) Second request for restitution of property

51. On an unspecified date in 1997 the applicant initiated an action for a declaratory judgment against the land commission, pursuant to section 11 § 2 of the ALA. He petitioned the courts to recognise that, as an heir of his parents, he had the right to have his property rights restored in respect of another four properties.

52. By a declaratory judgment of 2 April 1997 the Pazardzhik District Court found partly in favour of the applicant and recognised that the heirs of his parents had the right to have their property rights restored in respect of three of the claimed properties, namely, three plots of land of 6,600, 8,000 and 9,000 square metres respectively.

53. No appeal was lodged against this judgment so it entered into force on 5 May 1997.

54. On 17 June 1997 the applicant deposited a copy of the aforementioned judgment with the land commission and demanded compliance with it.

(f) Fourth decision of the land commission

55. In response to the aforementioned judgment, the land commission issued another decision.

56. By a decision of 24 July 1997 (no. 7A069/24.07.1997) it rescinded its decision of 20 April 1994 (see paragraph 46 above), readopted the text of said decision and, despite the favourable judgment (see paragraph 52 above), refused to recognise and restore the property rights of the heirs of the applicant's parents in respect of the two new plots of agricultural land of 6,600 and 8,000 square metres, now numbered 7 and 8 respectively. The grounds for the refusal were the following:

> "[This decision] rescinds decision [of the commission] no. 98/17 of 20 April 1994 on the basis of judgment [of 2 April 1997 of the Pazardzhik District Court] under section 11 § 2 of the [ALA] in respect of the properties under nos. 7 and 8 in the request. The property was restored to [those claimants with] documents dated most [recently] – declarations for entry into the [collective farm] of [the village of] Govedare in 1956 – [presented] by the successors"

57. On an unspecified date the applicant appealed against this decision.

58. In a judgment of 22 June 1999 the Pazardzhik District Court quashed the land commission's fourth decision of 24 July 1997 in respect of the refusal to recognise and restore the property rights of the heirs of the applicant's parents in respect of plots nos. 7 and 8. It found that the property rights of the heirs of the applicant's parents in respect of these two properties had already been recognised by virtue of the judgment of 2 April 1997 of the Pazardzhik District Court (see paragraph 52 above) and that the properties at issue were to be restored through a land redistribution plan.

59. No appeal was lodged against this judgment, so it entered into force on 30 July 1999.

60. On 5 August 1999 the applicant deposited a copy of the aforementioned judgment with the land commission. Apparently taking into account that the revised land redistribution plan of Govedare had already been published (see paragraph 73 below), the applicant requested compensation for these two properties (nos. 7 and 8) in the form of comparable State or municipal land.

61. It is not clear whether the applicant obtained restitution of the plot of 9,000 square metres, also mentioned in the judgment of the Pazardzhik District Court of 2 April 1997. He does not raise complaints in respect of this property.

(g) Third request for restitution of property

62. On an unspecified date in 1998 the applicant initiated another action for a declaratory judgment under section 11 § 2 of the ALA. He petitioned to the courts to recognise that, as an heir of his father, he had the right to have the property rights restored in respect of one more property, a plot of 6,000 square metres.

63. In a declaratory judgment of 19 December 1998 the Pazardzhik District Court recognised that the heirs of the applicant's father had the right to have their property rights restored.

64. No appeal was lodged against the judgment so it entered into force on 20 January 1999.

65. On 28 January 1999 the applicant deposited a copy of the aforementioned judgment with the land commission.

(h) Fifth decision of the land commission

66. In an attempt to comply with the judgments of the Pazardzhik District Court of 2 April 1997 and 19 December 1998 (see paragraphs 52 and 64 above), the land commission adopted another decision dealing with the three properties in question (those under nos. 7 and 8, plus the plot of 6,000 square metres in the judgment of 19 December 1998, thereinafter referred to under no. 9).

67. By a decision of 16 September 1999 (no. 7B148) the commission recognised the property rights of the heirs of the applicant's parents in respect of the aforementioned properties, but refused to restore them "in actual boundaries".

68. The commission based its refusal to restore plots nos. 7 and 8 on the judgment of 22 June 1999 of the Pazardzhik District Court (see paragraph 58 above). It reasoned as follows:

> "The judgment [of 22 June 1999 of the Pazardzhik District Court] which recognised the property rights [in question] entered into force after the land redistribution plan had been published in the Official Journal."

69. In respect of its refusal to restore plot no. 9, the commission used similar reasoning. It indicated as follows:

> "The judgment [of 19 December 1998 of the Pazardzhik District Court] under section 11 § 2 [of the ALA] which recognised the property rights [in question] entered into force after the land redistribution plan had been published in the Official Journal."

70. The applicant was informed of the decision on 28 October 1999. It is unclear whether he appealed against it.

71. In respect of plots nos. 7 and 8, the heirs of the applicant's parents received municipally-owned land on 23 February 2005. The applicant appears to be satisfied with the location and the size of this land.

72. In respect of the plot numbered under no. 9, on 6 June 2003 the land commission assigned to the heirs of the applicant's father compensation in the form of compensation bonds with a face value of 3,680 Bulgarian levs (BGN). The applicant does not specify whether he appealed against this decision.

(i) The revised land redistribution plan and the applicant's appeal against it

73. The first land redistribution plan for Govedare was published on an unspecified date. It is unclear what properties were allocated to the applicant

under it. For undisclosed reasons, on 28 August 1997 the Minister of Agriculture ordered the complete revision of the plan.

74. The revised land redistribution plan for Govedare was published in the Official Journal on 13 April 1999.

75. On 26 April 1999 the applicant appealed against the revised land redistribution plan. He complained of the size of the property that the heirs of his father had been allocated under the said plan for plots nos. 3 and 4 in his request no. 12007 of 4 March 1992 (see paragraph 39 above). He submitted a proposal for the amendment of the plan, according to which the heirs of his father were to receive a plot measuring 18,426 square metres.

76. In a judgment of 17 January 2000 the Pazardzhik Regional Court found in favour of the applicant and amended the revised land redistribution plan in accordance with the aforementioned proposal. The applicant took possession of the new plot thus allotted to his father's heirs on 28 September 2000. At the time of the parties' latest communications of 2006, he had not yet received any compensation for the remaining land to be restored, totalling 10,274 square metres.

77. The applicant did not appeal against the judgment of the Pazardzhik Regional Court, although he was entitled to.

3. Restitution of land previously owned by the applicant's mother

78. On an unspecified date the applicant requested from the land commission the restitution of several plots of agricultural land previously owned by his mother in the area around the village of Hadzhievo.

79. By a decision of 22 December 1993 (no. 86/8/22.12.1992) the commission refused to recognise the property rights of his mother's heirs in respect of seven plots of agricultural land.

80. On an appeal by the applicant, in a final judgment of 12 June 1995 the Pazardzhik District Court quashed the aforementioned decision of the land commission and, instead, restored the property rights of the heirs of the applicant's mother in respect of the seven plots, totalling 35,300 square metres.

81. On 9 November 1995 the applicant deposited a copy of the aforementioned judgment with the land commission and demanded compliance with it.

82. On 30 March 2000 the land commission adopted a decision (no. 1B171/30.03.2000) whereby it allocated to the heirs of the applicant's mother other land in compensation for the aforementioned property. The applicant, who appears to be satisfied with the size and quality of this land, took possession of it on 23 February 2005.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Restitution of agricultural land

1. General approach

83. The Agricultural Land Act of 1991 ("the ALA", *Закон за собствеността и ползването на земеделските земи*) provides, *inter alia*, that persons, or their heirs, whose land has been collectivised, may request restoration of their ownership rights under certain conditions (section 10 of the ALA). On the basis of certain statutory criteria, such as whether or not the plot of land once owned by the claimant or his or her ancestors had remained unaffected by urban construction, restitution may be "in actual boundaries" or through a redistribution plan.

84. Two possible ways of obtaining restitution are provided for: (a) administrative proceedings, initiated within a period of seventeen months following the entry into force of ALA, through a request to the local agricultural land commission (section 11 § 1) whose decision is subject to appeal before the courts (section 14 § 3), or, (b) after the expiry of that time-limit, through a civil claim to the competent court, directed against the respective land commission (section 11 § 2 of the ALA).

2. Restitution under section 11 § 1 of the ALA

85. When seized with a request for restitution under section 11 § 1 of the ALA, it was the land commission's task to establish whether the relevant statutory conditions were met and if so, to issue a decision restoring ownership. It could not revoke its decisions. Favourable decisions were not subject to appeal and were final. Following an amendment to the ALA of 1995, land commissions could modify their decisions within certain time limits in case where (1) they contained factual mistakes, or (2) with certain limitations, new facts or documents had been discovered (section 14 §§ 6 and 7). Some courts have stated that the decisions of the land commissions have characteristics similar to those of certifications in *ex parte* notary proceedings (*opred.* 10333-2002-VAS; *opred.* 1020-2003-VAS). It has also been stated that land commissions' decisions are administrative decisions (1832-93-III).

86. A claimant whose request for restitution has been refused by the competent land commission may appeal to the respective District Court (section 14 § 3 of the ALA). The District Court has jurisdiction to examine the matter on the merits and determine whether or not the claimant has the right to restitution under the ALA. If it finds that the relevant statutory criteria for restitution are met, the court shall set aside the land

commission's refusal and order restitution (section 14 §§ 1-3 of the ALA). The District Court's judgment is amenable to review (cassation).

87. Land commissions, which existed until 2002, were state bodies whose members were appointed by the Minister of Agriculture (section 33 of the ALA). In 2002 they were replaced by Agriculture and Forestry Departments, after 2008 named Agricultural Departments, whose members are appointed by the Minister of Agriculture and Food.

88. By section 14 of the Regulations for the Implementation of the Agricultural Land Act, a restitution request concerning the property of a deceased person lodged by one of the heirs benefits all of them.

3. Restitution through general civil action under section 11 § 2 of the ALA

89. Persons claiming restitution of agricultural land who have missed the seventeen-month time-limit under section 11 § 1, may bring an action for a declaratory judgment against the local land commission. In these proceedings the courts determine whether or not the claimant has the right to restitution. Where the courts decide in favour of the claimant, the land commission must comply and issue the necessary restitution decision, restoring the claimant's rights "in actual boundaries" or through a land redistribution plan.

90. In the absence of an express provision, the legal theory accepts that, similarly to the procedure under section 11 § 1 of the ALA, an action brought by one of the heirs of a deceased person benefits all of them.

4. Restitution through land redistribution plans and compensation in lieu of restitution

91. By section 10b of the ALA, former owners whose property cannot be restored "in actual boundaries" are to receive land by means of a land redistribution plan, on the basis of which the respective land commission adopts a decision to restore the property (section 17 of the ALA).

92. Where the land in a certain area is not sufficient to satisfy fully all former owners, the land to be provided to each of them is reduced. For the difference, they are to be compensated with municipal land or with compensation bonds, which can be used in privatisation tenders or for the purchase of State-owned land (sections 15 §§ 2 and 3 and 35 of the ALA).

93. In preparing a land redistribution plan, the land commission takes into consideration former owners' claims which have been presented to it prior to the publication in the Official Journal of a notification that a draft plan has been prepared. It cannot take into account claims presented to it later; in that case, former owners are to receive compensation through municipal land or bonds (section 11 § 4 of the ALA).

94. Appeals against land redistribution plans were, at the relevant time, to be addressed to the respective Regional Court. They had to be accompanied by a proposal for a specific amendment to the plan (section 25 § 6 of the Regulations for the Implementation of the Agricultural Land Act). The judgments of the regional courts were subject to cassation.

95. Pursuant to section 17 § 8 of the ALA, the Minister of Agriculture is authorised to order the revision of a land redistribution plan where it has been established that the original one contained an obvious factual error.

B. The State Responsibility for Damage Act 1988 and relevant practice of the domestic courts

96. Section 1 of the State Responsibility for Damage Act of 1988 ("the SRDA") provides that the State is liable for damage suffered by private persons as a result of unlawful acts or omissions by State bodies or civil servants, committed in the course of or in connection with the performance of their duties. Section 4 of the Act provides that compensation is due for all damage which is the direct and proximate result of the unlawful act or omission.

97. In some cases the domestic courts have allowed claims under section 1 of the SRDA on the basis of the authorities' unlawful acts or omissions in restitution proceedings. In a judgment of 14 February 2008 the Supreme Court of Cassation awarded damages to the claimant, finding that the respective land commission had unnecessary delayed taking a decision on his request for restitution and had eventually unlawfully refused restitution (judgment no. 112 of 14 February 2008, case no. 1319/2007). In another judgment of 21 June 2002, the Nova Zagora District Court allowed a claim against the respective land commission, finding that the claimant had suffered damages as a result of the commission's refusal to recognise and restore his rights to a certain property, and of its renewed failure to recognise and restore his rights after the initial refusal had been declared null and void by the courts (judgment no. 224 of 21 June 2002, case no. 74/2002).

98. However, in a judgment of 23 November 2004 the Veliko Tarnovo Regional Court dismissed a claim for damages against the respective land commission. It found that the rescission of a decision of the commission, which had entered into force and whereby the commission had recognised the claimant's rights over certain properties, was null and void. Nevertheless, it concluded that the claimant had not suffered damages as the initial decision had not sufficed to make her the owner of the property at issue (judgment 240 of 23 November 2004, case no. 773/240).

99. In a judgment of 11 January 2005 the Smolyan Regional Court allowed a claim against the relevant municipality, finding that the claimants

had suffered damage as a result of the municipality's failure to duly correct their property's borders in the cadastral maps (judgment no. 452 of 11 January 2005, case no. 407/2004).

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLE 1 OF PROTOCOL NO. 1 AND ARTICLE 6 § 1 OF THE CONVENTION

100. The applicant complained under Article 1 of Protocol No. 1 that he could not for long periods of time have his property rights restored or obtain compensation in lieu of restitution, and under Article 6 § 1 of the Convention that the domestic authorities had failed to comply with final court decisions in his favour.

101. Article 1 of Protocol No. 1 reads:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

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

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

A. Admissibility

102. The Government urged the Court to dismiss the application as inadmissible for failure to exhaust domestic remedies (Article 35 § 1 of the Convention). They pointed out that the applicant had not sought damages under the State Responsibility for Damage Act. Relying on the relevant judgments of the Nova Zagora District Court and the Smolyan Regional Court (see paragraphs 97 and 99 above), they argued that an action for damages under that Act could have effectively remedied the applicant's grievances.

103. The applicant contested this argument.

104. The Court recalls that under Article 35 § 1 of the Convention the only remedies required to be exhausted are those that are effective and

capable of redressing the alleged violation (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II). In the present case, as regards the complaints under Article 1 of Protocol No. 1 that the authorities failed for long periods of time to restore the applicant's rights over the properties he claimed or to provide him with compensation, the Court notes that an action under the SRDA might, in principle, provide redress, as exemplified by the practice of the domestic courts referred to above (see paragraphs 97 and 99) and concerning similar situations. However, the Court is not convinced that these judgments, one of which was given by a district court and another by a regional court, are indicative of a constant practice. Furthermore, in a case which was in practice identical with that of the applicant, as regards the land previously owned by him, the claimant's action was dismissed (see paragraph 98 above).

105. Moreover, the Court is of the view that the applicant, who could not have known when his property rights would be restored, or, respectively, he would receive compensation, cannot have been expected to periodically bring actions for damages in order to obtain redress for the delays (see, for comparison, *Kirilova and Others*, cited above, § 116). Had he been required to do so, this might have erected a permanent barrier to bringing matters before the Court (see, *mutatis mutandis*, *Guzzardi v. Italy*, 6 November 1980, § 80, Series A no. 39). In the specific circumstances of the case, therefore, an action under the SRDA did not represent an effective remedy, capable of redressing the alleged violation, which the applicant should have exhausted.

106. As regards the applicant's complaints under Article 6 § 1 of the Convention, the Court observes that an action under the SRDA could not have remedied the applicant's grievances as it could not directly compel the authorities to take the necessary actions to comply with final court judgments (see, *mutatis mutandis*, *Iatridis v. Greece* [GC], no. 31107/96, § 47, ECHR 1999-II, and *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 116, 9 June 2005).

107. Accordingly, the Court dismisses the Government's preliminary objection based on non-exhaustion of domestic remedies.

108. Furthermore, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Alleged violations of Article 1 of Protocol No. 1

109. The applicant complained that he had not been able, for long periods of time, to have his property rights restored or to obtain compensation.

110. The Government considered that the Pazardzhik land commission had acted lawfully, in good faith and in due time, in view of the complexity of the restitution process.

(a) General principles

111. The Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest The Court observes that in its established case-law it has examined the non-enforcement of a decision recognising title to property under the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Ramadhi and Others v. Albania*, no. 38222/02, §§ 75-79, 13 November 2007, with further references).

(b) Application of those principles to the present case

112. The Court will examine separately the different restitution procedures the applicant was involved in.

(i) Plot no. 9, formerly owned by the applicant's father

113. The Court observes that in its judgment of 19 December 1998 the Pazardzhik District Court found that the heirs of the applicant's father had the right to have their property rights restored in respect of that plot, measuring 6,000 square metres (see paragraphs 62-63 above). This was not necessarily an entitlement to restitution "in actual boundaries" or to compensation with municipally-owned land since the relevant domestic legislation provided that former owners could also be compensated with bonds (see paragraph 93 above). Later on the heirs of the applicant's father received compensation bonds for the plot (see paragraph 72 above).

114. The case does not concern existing possessions; nevertheless, the Court finds that following the above-mentioned judgment of 19 December 1998 the applicant, as an heir of his father, had a legitimate expectation to receive property or other compensation in respect of the plot in question.

115. In these circumstances the Court finds that the applicant's legitimate expectation in respect of plot no. 9 was realised with the receipt of bonds. It follows that there was no interference with the applicant's rights and, accordingly, no violation of Article 1 of Protocol No. 1.

(ii) The land previously owned by the applicant

116. The Court notes that the applicant never obtained plots nos. 7 and 8 despite the Pazardzhik land commission's decision of 18 December 1992 (see paragraph 9 above) recognising and restoring his rights "in actual boundaries".

117. The Court notes further that the land commission's decision at issue was given in *ex parte* proceedings and could be challenged either directly or indirectly, without any limitation in time, if another person claiming to have property rights over the same land brought an action under section 11 § 2 of the ALA (see paragraphs 89-90 above) or a *rei vindicatio* action. Having regard to the above and to the fact that the applicant's claim to plots nos. 7 and 8 had not been the subject matter of judicial examination, the Court cannot reach the conclusion that the decision of 18 December 1992 ever acquired the stability which would give rise to a legitimate expectation on the part of the applicant to receive those plots in "actual boundaries". Therefore, the Court is of the view that the legitimate expectation which arose for the applicant pursuant to the decision of 18 December 1992 could be realised either through obtaining the restitution of plots nos. 7 and 8, or through compensation in lieu thereof, as provided for in domestic law.

118. As in 2005 the applicant did obtain compensation for plot no. 7 (see paragraph 37 above) and, furthermore, does not allege that he will not receive the compensation provided for in domestic law for plot no. 8, the Court is of the view that the issue it is called upon to examine here is about the delay in providing compensation to the applicant and thus realising the legitimate expectation that arose for him pursuant to the decision of 18 December 1992.

119. The Court considers that the delay on the part of the authorities in providing compensation to the applicant amounted to interference with his right to property, within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see paragraph 111 above). Furthermore, the Court accepts that this interference was lawful, as there were no special time-limits for providing compensation under the relevant legislation, and might have pursued a legitimate aim in the public interest, namely to protect the rights of others, as the authorities needed to accommodate the claims of numerous former owners in the rather complex restitution process.

120. Turning to the question of proportionality, the Court has to examine whether the delay in awarding the compensation due meant that the applicant had to bear a special and excessive burden (see *Ramadhi and Others v. Albania*, cited above, § 78).

121. The Court notes that the applicant's legitimate expectation to receive plots no. 7 and 8 or compensation thereof arose not later than in May 1993 (see paragraph 9 above). The compensation for plot no. 7 was received in 2005, that is twelve years later (see paragraph 37 above). As of

2006, the applicant had not received compensation for plot no. 8 (see paragraph 38 above). The delay was therefore thirteen years.

122. The Court notes that for these considerable periods of time – twelve and thirteen years respectively – the applicant was left in a state of uncertainty as to the realisation of his property rights and was prevented from enjoying his possessions. The Court acknowledges that the relevant events happened in a period of social and economic transition in Bulgaria and that the authorities needed to take into account the claims of numerous interested parties (see *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, § 65, 12 January 2006, and, *mutatis mutandis, Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, § 172, 15 March 2007). However, in the absence of any specific justifications for the delays in providing compensation to the applicant, apart from the general complexity of the restitution process referred to by the Government (see paragraph 110 above), the Court cannot but accept that the delays were unreasonable and placed an excessive burden on the applicant (see *Ramadhi and Others v. Albania*, cited above, § 83).

123. The Court notes, in addition, that the applicant was for a long period of time left in uncertainty as to whether he would receive plots nos. 7 and 8 in their "actual boundaries" or compensation, due to the contradictory decisions of the national authorities (see paragraphs 9-36 above).

124. Accordingly, the Court concludes that there has been a violation of Article 1 of Protocol No. 1 in the case.

(iii) The remaining plots

125. The Court notes that in its judgment of 29 December 1993 (see paragraph 42 above) the Pazardzhik District Court recognised the rights of the heirs of the applicant's father to receive land through a land redistribution plan for plots nos. 3 and 4, as referred to in the applicant's request no. 12007 of 4 March 1992 (see paragraph 39 above), totalling 28,700 square metres. The Court notes further that the heirs of the applicant's father only received 18,426 square metres of land through the revised land redistribution plan for Govedare (see paragraphs 75-76 above).

126. The applicant, as one of his father's heirs, remained entitled to receive compensation for the land that could not be restored through the land redistribution plan (see paragraph 93 above). He does not allege that he will not receive that compensation. Moreover, the Court has not been informed of any developments in the case after 2006. Therefore, similarly to its approach above (see paragraph 117), the Court is of the view that the issue it is called upon to examine here is about the delay in providing compensation to the applicant up to 2006.

127. The right of the heirs of the applicant's father to the compensation in question was recognised in a judgment of 29 December 1993 (see

paragraph 42 above). As of 2006, the applicant had still not received any compensation for 10,274 square metres of the land (see paragraph 76 above). The delay was therefore thirteen years.

128. Similarly, in respect of the remaining plots, namely plots nos. 7 and 8 which had formerly been owned by the applicant's parents (see paragraphs 52-60 and 71 above, not to be confused with the plots owned by the applicant carrying the same numbers, see paragraphs 116-124 above), and the seven plots previously owned by the applicant's mother (see paragraphs 78-82 above), the sole question to be examined by the Court is whether the delay in providing compensation to the applicant, as an heir of his parents, amounted to a violation of Article 1 of Protocol No. 1.

129. In respect of plots nos. 7 and 8 mentioned in the preceding paragraph, the heirs of the applicant's parents had their restitution rights recognised in a court judgment of 2 April 1997 (see paragraph 52 above). The compensation for these plots was provided in 2005 (see paragraph 71 above), that is, eight years later. Providing compensation for the seven plots previously owned by the applicant's mother was delayed by ten years as the rights of her heirs were recognised in a court judgment of 12 June 1995 and the compensation was provided in 2005 (see paragraphs 80 and 83 above).

130. The Court refers to its findings above that the delays in providing compensation in the present case amounted to interference with the applicant's right to peaceful enjoyment of his possessions, and that this interference was lawful and pursued a legitimate aim in the public interest, but failed to strike a fair balance (see paragraphs 119-122 above). The Court does not see a reason to reach a different conclusion in respect of the eleven plots at issue here.

131. Accordingly, it concludes that there has been a violation of Article 1 of Protocol No. 1 in that the authorities unjustifiably delayed providing compensation to the applicant for the eleven plots at issue.

2. Alleged violations of Article 6 § 1 of the Convention

132. Under Article 6 § 1, the applicant complained that the authorities failed to comply with final court judgments in his favour. In particular, be complained:

(a) in respect of the land previously owned by him – that the Pazardzhik land commission had failed to comply with several judgments of the Pazarzhik District Court in his favour;

(b) in respect of plots nos. 3 and 4, previously owned by his father – that in its judgment of 17 January 2000 (see paragraph 76 above) the Pazardzhik Regional Court had failed to take into account the earlier judgment of the Pazardzhik District Court of 29 December 1993 (see paragraph 42 above)

(c) in respect of plot no. 9, previously owned by his father – that in adopting its decision of 16 September 1999 (see paragraph 67 above) and refusing to restore to the heirs of the his father that plot, the land

commission had failed to comply with the final judgment of the Pazardzhik District Court of 11 December 1998 (see paragraph 63 above); and

(d) in respect of the remaining plots – that, in enforcing the final court judgments in his favour, the authorities had delayed providing him with compensation.

133. The Government argued that Article 6 § 1 was inapplicable in the case because the proceedings before the Pazardzhik agricultural land commission had been of an administrative and not a judicial character.

134. The Court does not deem it necessary to examine the Government's objection based on the alleged non-applicability of Article 6 § 1, because, in view of its analysis and conclusions under Article 1 of Protocol No. 1 above (see paragraphs 117-137), it considers that no separate issues arise in the case under Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

135. 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. Pecuniary damage

136. The applicant claimed the following amounts in respect of pecuniary damage:

(a) 6,811 Bulgarian levs (BGN), the equivalent of approximately 3,500 euros (EUR), in respect of the difference between the values of plot no. 7 of his own former land and the land received as compensation, plus BGN 1,473.55, the equivalent of EUR 755, for lost rent for this property from 1992 to 2005,

(b) BGN 4,128, the equivalent of EUR 2,120, for the value of plot no. 8 of the land formerly owned by the applicant, plus BGN 1,015.73, the equivalent of EUR 520, for lost rent for this property from 1992 to 2006;

(c) BGN 10,603, the equivalent of EUR 5,440, which represented the value of the 10,274 square metres of land due to the heirs of the applicant's father in respect of plots nos. 3 and 4 in the applicant's request no. 12007 of 4 March 1992; BGN 973.65, the equivalent of EUR 500, for lost rent for this land from 1993 to 2000; and BGN 1698.36, the equivalent of EUR 870, for lost rent from 1993 to 2000 for the 18,426 square metres, which were

restored to the heirs of the applicant's father by virtue of the Pazardzhik Regional Court's judgment of 17 January 2000 (see paragraph 76 above);

(d) BGN 2,253.82, the equivalent of EUR 1,155, for lost rent for plots nos. 7 and 8, formerly owned by the applicant's parents, from 1997 to 2005; and

(e) BGN 4,058.58, the equivalent of EUR 2,080, for lost rent for the plots formerly owned by the applicant's mother, for the period from 1995 to 2005.

In support of these claims the applicant presented valuation reports prepared by certified experts.

137. The Government considered that the damages claimed were not the direct and proximate result of the alleged violations.

138. The Court recalls that the violations it found under Article 1 of Protocol No. 1 only concerned the delay on the part of the authorities to provide compensation to the applicant (see paragraphs 124 and 131 above). Therefore, the Court will only grant compensation for that delay. It cannot however accept the basis for calculating that compensation proposed by the applicant, that is, the rent that would have been received had the properties at issue been rented out. It notes, in particular, that the violation found by it did not concern any defined right of the applicant to receive land, but the delay in providing compensation, which could also take the form of bonds.

139. The Court will also take into account the fact that some of the plots had been owned by the applicant's parents and that the applicant is not his parents' sole heir (see paragraph 39 above). He was not therefore the only person entitled to receive the delayed compensation for those plots.

140. In view of the considerations above, the Court awards the applicant EUR 2,000 under this head.

2. Non-pecuniary damage

141. Leaving the determination of the exact amount to the Court, the applicant also claimed non-pecuniary damage, arguing that he had suffered anguish and frustration during a considerable period of time.

142. The Government did not comment.

143. The Court finds that the applicant must have suffered anguish and frustration as a result of the violations found. Judging on the basis of equity, it awards him EUR 1,000 under this head.

B. Costs and expenses

144. The applicant claimed BGN 4,895, the equivalent of EUR 2,500, for 50 hours of work by his lawyer, Mrs N. Sedefova, after the communication of the case to the Government, at an hourly rate of EUR 50. He presented a time sheet in support of this claim. The applicant claimed another BGN 1,074, the equivalent of EUR 550, for the cost of the valuation

reports he submitted and the translation of his observation and claims for just satisfaction. He also claimed BGN 1,200, the equivalent of EUR 615, for expenses incurred in the domestic restitution proceedings. In support of these claims he presented the relevant receipts.

145. The Government considered the claim for legal fees to be excessive and urged the Court to dismiss as unrelated to the alleged violations the claim for costs in the domestic proceedings.

146. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the case at hand, the Court notes that it has found violations of the Convention only in respect of some of the applicant's complaints. In view of its findings above, the Court awards EUR 2,000 for all costs and expenses.

C. Default interest

147. The Court considers it appropriate that the default interest 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. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention on account of the compensation for plot no. 9 previously owned by the applicant's father;

3. *Holds* that, in respect of plots nos. 7 and 8 previously owned by the applicant, there has been a violation of Article 1 of Protocol No. 1 to the Convention because of the lengthy uncertainty as to whether the applicant would receive the actual plots or compensation and the delay in providing compensation;

4. *Holds* that, in respect of the remaining eleven plots previously owned by the applicant's parents, there has been a violation of Article 1 of Protocol No. 1 to the Convention because of the delay in providing compensation;

5. *Holds* that no separate issues arise under Article 6 § 1 of the Convention;

6. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

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

7. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 7 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President