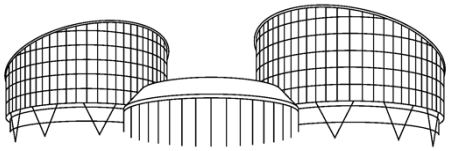

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

# CASE OF SAKSKOBURGGOTSKI AND CHROBOK v. BULGARIA

*(Applications nos. 38948/10 and 8954/17)*

JUDGMENT
*(Just satisfaction)*

Art 41 • Just satisfaction • Award for pecuniary damage sustained from violation of Art 1 P1 on account of disproportionate ban on any commercial exploitation of forests allegedly obtained through restitution

STRASBOURG

2 May 2023

*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 Sakskoburggotski and Chrobok v. Bulgaria,**

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

Pere Pastor Vilanova*, President*,
Georgios A. Serghides,
Jolien Schukking,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis*, judges*,
Maiia Petrova Rousseva*,* ad hoc *judge*,
and Milan Blaško, *Section Registrar,*

Having deliberated in private on 28 February and 28 March 2023,

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

# PROCEDURE

1. The case concerns the attempts of the applicants – the former King of Bulgaria (1943-46) and his sister – to obtain the restitution of former properties of the Crown. It concerns, in particular, a moratorium on the commercial exploitation of some of these properties, which were in the possession of the applicants.

2. Mr Yonko Grozev, the judge elected in respect of Bulgaria, was unable to sit in the case (Rule 28). On 22 November 2017 the President of the Chamber appointed Ms Maiia Rousseva to sit as an *ad hoc* judge (Rule 29).

3. In a judgment delivered on 7 September 2021 ("the principal judgment" – see *Sakskoburggotski and Chrobok v. Bulgaria*, nos. 38948/10 and 8954/17, 7 September 2021), the Court found a violation of Article 1 of Protocol No. 1. It considered that the above-mentioned moratorium, in so far as it concerned the commercial exploitation of numerous plots of forestry land, was unjustified and overly lengthy.

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary damage, the Court reserved it and invited the Government and the applicants to submit, within six months, their written observations on that issue and, in particular, to notify it of any agreement they might reach (ibid., § 283, and point 5 of the operative provisions).

5. The applicants and the Government were unable to reach an agreement. They each filed observations under Article 41.

6. The applicants were represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv, and Ms E. Hristova, a lawyer practising in Sofia. The Government were represented by their Agents, Ms M. Dimitrova and Ms I. Stancheva-Chinova from the Ministry of Justice.

# RELEVANT FACTUAL CIRCUMSTANCES

7. After the fall of the communist regime in Bulgaria and the adoption of denationalisation legislation, the applicants sought the restitution of former properties of the Crown. Between 2000 and 2003 they obtained several administrative decisions for the restitution of forestry land measuring 1,654 hectares.

8. Of these, 421 hectares were restored to the heirs of the applicants' grandfather, King Ferdinand I, namely the applicants and other individuals (see § 10 of the Court's initial partial decision in the case – *Sakskoburggotski and Others v. Bulgaria* (dec.), nos. 38948/10 and 2 others, 20 March 2018). The remaining decisions stated that the land was being restored only to the heirs of King Boris III, namely the two applicants.

9. Despite the above, it was only the applicants who took possession of the land and started using it. In particular, they had a ten-year forestry plan approved and logging operations carried out.

10. In November 2009 the State, represented by the Minister of Agriculture, brought *rei vindicatio* proceedings against the applicants and the remaining heirs of Ferdinand I. The State claimed to be the owner of the land, arguing that there had in fact been no grounds to order restitution. According to publicly available information, those proceedings are still pending before the first-instance Sofia Regional Court.

11. In the meantime, on 18 November 2009 Parliament imposed a moratorium on the commercial exploitation of the properties claimed by the applicants, including the forestry land. According to publicly available information, the moratorium has remained in force to this date.

12. The developments referred to above are described in more detail in the principal judgment (see, in particular, §§ 49-56, 123-25 and 137-40). After the adoption of that judgment, the parties informed the Court of the following additional developments, which they had not mentioned previously.

13. On 3 September 2011, in the *rei vindicatio* proceedings brought by the State, the Sofia Regional Court imposed an interim measure – a ban on any logging in the forests which were the subject of the proceedings. The court considered that the State had a legitimate interest in such a measure, which was thus justified.

14. On 7 March 2019 the remaining heirs of Ferdinand I entered into an agreement with the State whereby they recognised its title to the land restored to them. They stated that they had never been in possession of the land, had never considered it their property, had never acquired title to it and had never sought to manage, use or dispose of it. On 11 March 2019 the agreement was approved by the Sofia Regional Court, which thus discontinued the proceedings with regard to these individuals.

# THE LAW

15. Article 41 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."

## I. POSITIONS OF THE PARTIES

### A. Claims by the applicants

16. The applicants referred to the forestry plan on the management and economic use of the forests approved by the relevant State body in 2005 (see paragraph 9 above and § 55 of the principal judgment). They argued that if Parliament had not imposed the moratorium on the commercial exploitation of the forests, they would have received income from logging when implementing the plan. They submitted an expert report on the amount of this income.

17. The expert calculated the applicants' total losses of income from logging, for the period from the adoption of the moratorium decision to 31 July 2022, at 3,006,885 Bulgarian levs (BGN), the equivalent of 1,537,395 euros (EUR). In particular, he considered that in the first seven months of 2022 the applicants would have earned BGN 168,465, equivalent to EUR 86,170, on that account.

18. The applicants accordingly claimed the above total amount (EUR 1,537,395), plus BGN 24,066 (EUR 12,310) for each month after 31 July 2022; the latter sum was calculated per month on the basis of the amount indicated by the expert for the first seven months of 2022.

19. The applicants also claimed an unspecified amount for loss of customers and damage to their reputation *vis-à-vis* their commercial partners.

### B. Initial position of the Government

20. The Government, commenting on the applicants' claims for just satisfaction submitted earlier in the proceedings (see § 279 of the principal judgment), argued that there was no causal link between the pecuniary damage alleged – loss of income from logging – and the violation of the applicants' rights. That was so because, in the Government's view, any such damage had not resulted from the moratorium, but from the interim measure imposed by the Sofia Regional Court on 3 September 2011 (see paragraph 13 above). The Government relied additionally on Article 403 § 1 of the Code of Civil Procedure which provides that, where an interim measure has been imposed in civil proceedings and the party against whom the measure was taken wins the case, the other party will be liable for any damage caused by

the measure. According to the Government, since the applicants can thus claim compensation for any profit from logging lost on the basis of the interim measure, their interests will be fully guaranteed should the national courts eventually decide in their favour.

21. The Government further argued that the applicants could have used the land for other commercial purposes, such as hunting.

22. The Government pointed out that parts of the land had been restored to all heirs of the applicants' grandfather, Ferdinand I. This meant that the remaining heirs would have been entitled to a share of any profits.

23. Lastly, the Government pointed out that the expert who had prepared the report submitted by the applicants earlier (and who had also drawn up the report referred to in paragraphs 16-18 above) was not independent, because he was an employee of the association set up by the applicants and tasked with managing the forests.

### C. The applicants' response

24. The applicants pointed out that the violation of Article 1 of Protocol No. 1 found by the Court in the principal judgment had resulted from the moratorium imposed by Parliament, and not from the interim measure imposed by the Sofia Regional Court.

25. Furthermore, they observed that the remaining heirs of Ferdinand I had never been interested in the restitution of the former properties of the Crown in Bulgaria. It was unclear why the State's *rei vindicatio* claim had been directed against them (see paragraph 10 above), seeing that they had never been in possession of the forests and had never claimed any property rights. The agreement the heirs had entered into in 2019 (see paragraph 14 above) had been intended to demonstrate a lack of interest on their part, so that they would not be burdened with adverse costs. All this meant that the dispute falling to be examined in the *rei vindicatio* proceedings had from the outset been solely between the two applicants and the State.

26. Referring to the fact that the proceedings at issue were still pending (see paragraph 10 above), the applicants stated that any damages awarded by the Court would eventually be taken into consideration when the parties settled their accounts after the end of the proceedings, when a final decision would be taken as to their respective property rights.

27. Lastly, with reference to the Government's argument that the expert retained by them was not independent (see paragraph 23 above), the applicants stated that they had never denied his employment in their association. It meant, however, that he had easy access to the relevant documents and knowledge of the state of the forests. To corroborate his conclusions, the applicants submitted the opinion of two other experts, who considered that the report prepared for the present proceedings (see

paragraphs 16-18 above) had been "professionally done" and "reliable", and that "if anything, the values indicated in it had been lowered".

### D. The Government's response

28. The Government contested the applicants' claim for compensation for loss of customers (see paragraph 19 above), contending that logging was "not a type of commercial activity which would require special skills or a certain professional approach", and which would attract specific customers. Moreover, the applicants had not shown that before the imposition of the moratorium they had had any regular customers.

## II. THE COURT'S ASSESSMENT

29. The Court observes at the outset that the applicants claimed damages solely for their inability to engage in commercial logging in the forests which had been subject to restitution (see paragraphs 16-19 above).

### A. As to the period for which the applicants have to be compensated

30. The Government contended that after 3 September 2011, when the Sofia Regional Court had imposed a ban on any logging in the forests possessed and managed by the applicants (see paragraph 13 above), there had been no causal link between any losses sustained by the applicants as a result of their inability to conduct logging and the violation found in the principal judgment; as noted, that violation concerned only the Parliament-imposed moratorium (see paragraphs 3 and 20 above). The Government pointed out that, if the applicants were eventually partially or fully successful in the domestic proceedings concerning their property rights, they would be entitled under Article 403 § 1 of the Code of Civil Procedure to claim compensation for any damage stemming from the above-mentioned ban on logging (see paragraph 20 above).

31. The Court, for its part, observes that the moratorium which was the subject of the principal judgment was decided on by Parliament on 18 November 2009 (see paragraph 11 above). The interim measure referred to by the Government was imposed on 3 September 2011 (see paragraph 13 above). After the latter date the two measures have existed in parallel, and both remain in force.

32. However, at the time when it adopted the principal judgment, the Court was unaware of the decision of 3 September 2011 (see paragraph 12 above). It had no reason to consider that the impossibility for the applicants to engage in commercial logging in the forests had been due to anything but the moratorium, and the lengthy duration of this measure, namely from November 2009 to the date known to the Court at the time (October 2020),

was one of the key elements justifying the finding of a violation of Article 1 of Protocol No. 1. The Court considered such a duration of the restrictions imposed on the applicants "exorbitant", and criticised the authorities for the lengthy uncertainty they had placed the applicants in as a result (see § 265 of the principal judgment).

33. The Court sees no reason to depart at the present stage of the proceedings from its finding that the violation in the case concerned the whole period after the imposition of the moratorium. While the decision of 3 September 2011 could have, potentially, affected its findings on that point, the parties have presented no plausible explanation for their failure to inform it of that decision on an earlier date. Accordingly, the Court will proceed on the basis of its findings, as reached in the principal judgment.

34. In any event, the Court reiterates that, as a rule, the requirement that domestic remedies should be exhausted does not apply to just satisfaction claims submitted to it under Article 41 of the Convention. In the present case, the *rei vindicatio* proceedings concerning the restituted forests have been pending before the first-instance Sofia Regional Court since 2009 (see paragraph 10 above). Only after the closure of these proceedings, possibly after a three-level examination up to the Supreme Court of Cassation, the applicants, if they are the winning party, would be entitled to pursue the remedy referred to by the Government, namely a tort action against the State under Article 403 § 1 of the Code of Civil Procedure (see paragraph 20 above). However, indicating to them that they have to await the end of the main proceedings which, as mentioned, have been pending since 2009, and then initiate new ones in order to obtain compensation if the entitlement thereto arises, means imposing on the applicants an excessive burden; such a situation would hardly be consistent with the effective protection of human rights and with the aim and object of the Convention (see, *mutatis mutandis*, *Jalloh v. Germany* [GC], no. 54810/00, § 129, ECHR 2006-IX, and *S.L. and J.L. v. Croatia* (just satisfaction), no. 13712/11, § 15, 6 October 2016, both with further references).

35. Accordingly, while it remains aware that the remedy under Article 403 § 1 of the Code of Civil Procedure could become available to the applicants, and could potentially lead to the award of compensation for their inability to engage in commercial logging in the forests after 3 September 2011, the Court does not require the applicants to exhaust that remedy, and will make an award comprising the period after the latter date.

36. Its award will accordingly cover the whole period during which the moratorium on the commercial logging in the restituted forests has been in force, namely the period from 18 November 2009 to the present (see paragraph 11 above).

### B. As to the other heirs' position

37. The Government argued that, since part of the land in question had been restored to all heirs of King Ferdinand I, namely the applicants and other individuals, the latter would have been entitled to a share of any profits that the applicants would have received from logging (see paragraph 22 above).

38. However, the Court observes that the remaining heirs of Ferdinand I have shown, in particular when reaching an agreement with the Government in the context of the domestic proceedings (see paragraph 14 above), that they had no interest in the "royal restitution". The Court itself reached a similar conclusion in its partial decision in the case, referring, among other things, to similar agreements in other proceedings (see *Sakskoburggotski and Others*, cited above, §§ 141-46).

39. Moreover, the remaining heirs of Ferdinand I declared that they had never used or managed the land in question (see paragraph 14 above). There is no indication that they ever sought a share of the profits received by the applicants before 18 December 2009.

40. Consequently, the Court finds that any damage sustained as a result of the moratorium on the commercial exploitation of the forests, found in the principal judgment to be in breach of Article 1 of Protocol No. 1, was sustained by the applicants alone. It was the applicants who started such exploitation after they took possession of the forests, on the basis of a forestry plan they had approved, and who had logging carried out until the imposition of the moratorium.

### C. As to the reliability of the expert report submitted by the applicants

41. The Government next contested the expert report submitted by the applicants in support of their claims for just satisfaction, pointing out, in particular, that the expert who had drawn it up was an employee of the applicants' association (see paragraph 23 above).

42. The applicants did not deny the expert's employment, but submitted additional evidence, in particular the opinion of two other experts, who found the report at issue "professionally done" and "reliable" (see paragraph 27 above). The Government, for their part, while contesting the report, provided no alternative assessment as to the applicants' potential losses.

43. The Court thus sees no reason not to use the expert report submitted by the applicants. Moreover, it observes that the calculation of the potential losses sustained by them is a complex technical process, which it is unable to perform itself.

## D. Conclusions as to damage

44. The Court has already held that it will award pecuniary damage for the whole period after the imposition of the moratorium, namely from 18 November 2009 to the present (see paragraph 36 above). According to the expert report discussed above, the applicants' losses equalled EUR 1,537,395 from the beginning of that period up to 31 July 2022 (see paragraph 17 above). The applicants claimed in addition EUR 12,310 per month for the period after the latter date (see paragraph 18 above); EUR 98,480 must therefore be added to the above sum.

45. The Court thus awards the applicants EUR 1,635,875 in total for the pecuniary damage sustained by them on account of the moratorium on the commercial exploitation of the forests.

46. The Court additionally finds that the applicants have provided no evidence of loss of customers (see paragraph 19 above), or of any specific pecuniary damage suffered on that account.

47. In view of the fact that the domestic proceedings relating to the determination of the applicants' title are still pending (see paragraph 10 above), the Court takes note of the applicants' assurance that any award made will be taken into consideration when the parties settle their accounts after the close of the proceedings (see paragraph 26 above). In particular, to prevent any unjust enrichment from the present judgment, if the national courts ultimately find that the applicants are not, or are not entirely, the owners of the disputed plots, the applicants should repay the respective part of the compensation referred to in paragraph 44 above to the respondent State, in the event that it has been paid in the meantime (see, for similar solutions, *Molla Sali v. Greece* (just satisfaction) [GC], no. 20452/14, § 46, 18 June 2020, and *Casarin v. Italy*, no. 4893/13, § 89, 11 February 2021).

## E. Costs and expenses

48. Lastly, the applicants claimed EUR 184 for the translation of their submissions in the proceedings under Article 41 of the Convention. In support of this claim they submitted the relevant receipts. They requested that this amount be transferred directly into the bank account of the law firm of their legal representatives, Ekimdzhiev and Partners.

49. The Government did not comment.

50. The Court, finding that the costs claimed were actually and necessarily incurred, and that they are reasonable as to quantum, awards them in full. As requested by the applicants, the entire amount, namely EUR 184, is to be paid directly to their legal representatives.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,635,875 (one million six hundred and thirty-five thousand eight hundred and seventy-five euros), plus any tax that may be chargeable, in respect of pecuniary damage, subject to the conditions set out in paragraph 47;
      (ii) EUR 184 (one hundred and eighty-four euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly into the bank account of the law firm Ekimdzhiev and Partners;
   (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;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Milan Blaško<br>Registrar | Pere Pastor Vilanova<br>President |

# APPENDIX

List of the cases:

| No. | Application no. | Case name | Lodged on |
|---|---|---|---|
| 1. | 38948/10 | Sakskoburggotski and Chrobok v. Bulgaria | 16/06/2010 |
| 2. | 8954/17 | Sakskoburggotski and Chrobok v. Bulgaria | 13/01/2017 |

List of the applicants:

| No. | Name | Year of birth | Nationality | Place of residence |
|---|---|---|---|---|
| 1. | Simeon Borisov Sakskoburggotski | 1937 | Bulgarian | Sofia |
| 2. | Maria-Luisa Borisova Chrobok | 1933 | Bulgarian, German | USA |