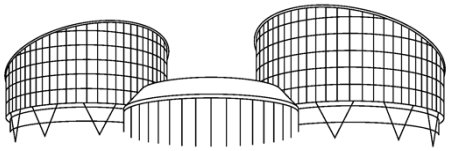

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF AGRO FRIGO OOD v. BULGARIA

(Application no. 39814/12)

JUDGMENT

STRASBOURG

5 September 2019

FINAL

27/01/2020

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Agro Frigo OOD v. Bulgaria,

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

Angelika Nußberger, *President,*
Ganna Yudkivska,
Síofra O'Leary,
Mārtiņš Mits,
Lətif Hüseynov,
Lado Chanturia, *judges,*
Mira Raycheva, ad hoc *judge,*

and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 9 July 2019,

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

PROCEDURE

1. The case originated in an application (no. 39814/12) 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 limited liability company, Agro Frigo OOD ("the applicant company"), on 12 June 2012.

2. The applicant company was represented by Mr M. Ekimdzhiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms V. Hristova, of the Ministry of Justice.

3. The applicant company alleged that the quashing of a final judgment in its favour, awarding it damages against the State, impinged on its rights to a fair trial and to peaceful enjoyment of its possessions.

4. On 13 June 2017 notice of the application was given to the Government.

5. Mr Yonko Grozev, the judge elected in respect of Bulgaria, was unable to sit in the case (Rule 28). On 25 January 2019 the President of the Chamber decided to appoint Ms Mira Raycheva to sit as an *ad hoc* judge (Rule 29).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant company has its registered seat in Nova Zagora.

A. The applicant company's application under the SAPARD

7. The Special Accession Programme for Agriculture and Rural Development (SAPARD) was established in 1999 by the Council of the European Union. Its aim was to provide support for pre-accession measures in the field of agriculture and rural development to Central and Eastern European candidate countries. In Bulgaria, the programme was managed by a governmental agency called the State Fund "Agriculture" (hereinafter "the Fund", see paragraph 29 below).

8. In 2006 the applicant company applied for a subsidy under the SAPARD, for a project envisaging the construction of an agricultural market in the town of Nova Zagora. The subsidy sought was intended to cover half of the project's cost. However, in a decision of 18 August 2006 the head of the Fund rejected the applicant company's application, finding that it had not been supported by the necessary documents and that it did not meet the relevant requirements; in particular, the project envisaged that grapevine seedlings would also be sold at the market, while financing under the SAPARD could be provided for agricultural markets where fruit, vegetables, flowers and fish only were sold.

9. The applicant company applied for judicial review and in a judgment of 31 March 2008 the Sofia City Court quashed the impugned decision, remitting the case to the Fund for a fresh examination. That judgment was upheld on 29 December 2008 by the Supreme Administrative Court. The national courts found that the applicant company had submitted all requisite documents and that its project met the applicable requirements; in the latter aspect they noted that grapevine seedlings were agricultural products and thus suitable to be sold at an agricultural market.

10. However, the application for a subsidy could not be re-examined. In a letter dated 10 December 2009 the head of the Fund informed the applicant company that contracting by the Fund to final beneficiaries under the SAPARD had stopped in October 2007, Bulgaria having joined the European Union on 1 January 2007.

B. Tort proceedings

11. In the beginning of 2010 the applicant company brought a tort action against the Fund under the State and Municipalities Responsibility for Damage Act (see paragraph 22 below), claiming in damage 5,587,998 Bulgarian levs (BGN), the equivalent of approximately 2,850,000 euros (EUR), corresponding to the subsidy which it would have received had its application been accepted, plus interest.

12. In a judgment of 15 November 2010 the Sofia Administrative Court dismissed the claim finding, in particular, that the quashing of the first refusal of the head of the Fund of 18 August 2006 (see paragraph 8 above)

could not be seen as meaning that the applicant company would have in any event been accorded the subsidy sought. No direct causal link could be established between the Fund's ultimate refusal to provide the subsidy, contained in its letter of 10 December 2009 (see paragraph 10 above), and any damage suffered by the applicant company.

13. However, upon appeal, in a judgment of 15 April 2011 the Supreme Administrative Court reversed the first-instance decision. It found, in particular, that the refusal contained in the letter of 10 December 2009 (see paragraph 10 above) was null and void as it contradicted a previous final court judgment. That previous judgment had established that the applicant company's application for a subsidy met the relevant criteria – a conclusion which was binding on the Fund. The latter's refusal of 10 December 2009 was based on the fact that the relevant time-limit for examining an application for a subsidy had expired, but it had become unable to carry out such examination through its own fault. Had it entered into a contract to provide the subsidy sought by the applicant company, instead of giving the decision of 18 August 2006 which had subsequently been quashed, the applicant company would have received the subsidy claimed. Thus, the non-payment of such a subsidy had inflicted on the latter damage. As to the amount of the potential subsidy, it had been established by an expert appointed by the Sofia Administrative Court and had been supported by contracts submitted by the applicant company and showing the cost of the intended works. Thus, the applicant company had fully substantiated its claim, in the amount indicated above (BGN 5,587,998 – see paragraph 11 above), and the Supreme Administrative Court awarded that sum. It awarded the applicant company an additional BGN 717,811 (the equivalent of approximately EUR 367,000) in interest.

14. The judgment above was not subject to appeal and was final.

15. Following it, on 17 May 2011 the applicant company obtained a writ of execution against the Fund.

C. Re-opening of the proceedings

16. In June 2011 the Minister of Finance, acting on behalf of the State, applied for the judgment of the Supreme Administrative Court of 15 April 2011 to be set aside and the proceedings to be re-opened, under Article 245 *et seq.* of the Code of Administrative Procedure (see paragraph 27 below). He pointed out that, payments under the SAPARD having already stopped, the compensation awarded to the applicant company had to be paid from the State budget, which meant that the State had been affected by the judgment at issue, while it had not been summoned to participate in the proceedings.

17. The Minister made, in addition, a number of arguments concerning the substance of the dispute. He pointed out that the Fund's refusal of 10 December 2009 to examine the applicant company's application for a

subsidy did not contradict the previous court judgments as it was based on new facts. In addition, in the tort proceedings the Fund had contested the contracts presented by the applicant company in support of its claim, but the Supreme Administrative Court had not taken these arguments into account. At the same time, only the Fund had the competence to assess the practicability and viability of the applicant company's project. Lastly, as the relevant rules required that the applicant company receive a subsidy only after having completed its project, it had not proven that it disposed of the financial resources to do so.

18. Following that application, on 6 October 2011 the Supreme Administrative Court stayed the execution of its judgment of 15 April 2011.

19. The Supreme Administrative Court held a hearing on 1 December 2011. Counsel for the applicant company contested the application for re-opening, pointing out that the State had participated in the initial proceedings and that the State and Municipalities Responsibility for Damage Act did not require the participation in those proceedings of the Minister of Finance. Counsel for the Fund asked for the application for re-opening to be allowed.

20. In a judgment of 20 December 2011 the Supreme Administrative Court allowed the Minister's application, finding that the conditions set out in Article 246 of the Code of Administrative Procedure (see paragraph 27 below) had been met. It set aside its previous judgment, re-opened the proceedings and remitted the case for a fresh examination, reasoning in particular as follows:

> "The State Fund "Agriculture" is created under section 11 [of the Support for Agricultural Producers Act]. According to paragraph 2(2) of the provision at issue, the Fund functions as SAPARD Agency, providing financial support under that programme – section 12(1). Such support is effectuated through subsidies. ... The above means that, when acting as SAPARD Agency, the State Fund "Agriculture" can enter into contracts disbursing EU funds only in the amounts and for the period agreed upon in the multiannual financial programme and the annual financial programmes agreed upon on its basis. On 24/03/2009 Parliament ratified the Agreement between the Republic of Bulgaria and the Commission of the European Community, amending the annual financial programme for 2006 concerning SAPARD. Article 1 of this Agreement stipulates that it amends the period of validity of the Community's financial obligation *vis-à-vis* the country for 2006. ... Article 2 § 2 contains a prohibition for the SAPARD Agency to enter into contracts involving Community financing under that Agreement, with whichever beneficiary, after the date on which the Republic of Bulgaria enters into agreement providing for support for the development of rural regions as a member of the European Union.
>
> The analysis of the above provisions shows that after 21/12/2009 the Fund, acting as SAPARD Agency and having the quality of defendant within the meaning of Article 205 of the Code of Administrative Procedure, has not had standing to act alone as defendant to the action brought against it on 6/01/2010 in relation to a contract under the SAPARD. According to section 4(4) of the [Support for Agricultural Producers Act], the revenue and expenditure parts of the [budget] of the Fund are to

> be confirmed annually by the Council of Ministers upon a proposal by the Minister of Agriculture .... That confirmation is to be coordinated with the Minister of Finance.
>
> The action against the [Fund], even though based on section 1 of the [State and Municipalities Responsibility for Damage Act], was aimed at receiving damage equivalent to the refused subsidy under the SAPARD programme, after its financing through funds from the [European] Community had stopped. This means that the Fund can only receive financing through a subsidy from the State budget. .... In this way the [disputed] judgment affects directly the State and is unfavourable to it. The conditions of Article 246 § 1 of the Code of Administrative Procedure have been satisfied and the judgment of the three-member panel is to be accordingly quashed. ... The case is to be remitted to the Sofia Administrative Court for a fresh examination by a different judicial panel."

21. After the re-opening, the applicant company's tort action was re-examined, and in a final judgment of the Supreme Administrative Court of 11 December 2014 it was dismissed. The domestic courts found that no direct causal link had been established between the Fund's refusal to provide a subsidy to the applicant company and any damage suffered by it, because the payment of such a subsidy could only be made after the applicant company had itself made the investment it had envisaged. However, it had not built with its own financial means the agricultural market it had planned. Moreover, some of the documents it had presented to support its application for a subsidy were found to be forged or null and void.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. State liability for damage

22. The State and Municipalities Responsibility for Damage Act (*Закон за отговорността на държавата и общините за вреди*) provides, in section 1(1), that the State and the municipalities are liable for damage caused to private individuals and legal entities as a result of unlawful decisions, acts or omissions by their bodies or officials while discharging their administrative duties. Compensation awarded under the Act comprises all pecuniary and non-pecuniary damage which is the direct and proximate result of the illegal act of omission (section 4). Any action under section 1(1) of the Act is to be examined by the administrative courts, under rules contained in the Code of Administrative Procedure.

23. Section 7 of the State and Municipalities Responsibility for Damage Act provides that the aggrieved person has to lodge an action against the body "whose illegal orders, actions, or omissions have caused the alleged damage". An identical provision is contained in Article 205 of the Code of Administrative Procedure.

24. In cases under the State and Municipalities Responsibility for Damage Act where private persons sought damages from the Fund, the

administrative courts examined their actions and gave decisions, without summoning for participation the Minister of Finance in his capacity of representative of the State (*Решение № 17050 от 18.12.2013 г. на ВАС по адм. д. № 3951/2013 г., III о.*; *Решение № 610 от 16.01.2014 г. на ВАС по адм. д. № 4595/2013 г., III о.*; *Решение № 2635 от 25.02.2014 г. на ВАС по адм. д. № 6245/2013 г., III о.*). Nor has the Minister of Finance participated in proceedings where the national courts examined tort actions against other specialised governmental agencies (for example, *Решение № 826 от 22.01.2014 г. на ВАС по адм. д. № 6246/2013 г., III о.*, concerning an action against the National Health Insurance Fund; *Решение № 881 от 22.01.2014 г. на ВАС по адм. д. № 14924/2012 г., III о.*, concerning an action against the National Customs Agency; *Решение № 1429 от 3.02.2009 г. на ВАС по адм. д. № 2964/2008 г., III о.*, concerning an action against the Privatisation Agency).

25. However, in a judgment dated 15 October 2015 the Supreme Administrative Court quashed a previous final judgment concerning a company's tort claim against a specialised governmental body, the Bulgarian Food Safety Agency, acting in application of Article 246 of the Code of Administrative Procedure (see paragraph 27 below) and upon a request by the Minister of Finance (*Решение № 10745 от 15.10.2015 г. на ВАС по адм. д. № 8783/2015 г.*). The tort claim examined was based on the fact that the defendant Agency had allegedly failed to react adequately to an outbreak of infectious disease affecting cattle. The animals had been bought through funding from the SAPARD. The initial judgment which was quashed had awarded damages to the plaintiff for loss of future profit and future agricultural subsidies. In allowing the re-opening of the proceedings, the Supreme Administrative Court held that the previous judgment had affected directly the State and had been unfavourable for it, whereas the State had not been summoned to participate.

26. Where an individual or a company have been awarded damages against a State body, they can obtain a writ of execution, which is to be presented to that body's financial department. If the debtor body is unable to meet its obligation under the writ within the current budget period, its superior body is obliged to ensure the necessary financial means during the next budget period (Article 519 of the Code of Civil Procedure).

B. Re-opening of administrative judicial proceedings

27. Re-opening of administrative judicial proceedings, including on tort claims under the State and Municipalities Responsibility for Damage Act, is provided for in the Code of Administrative Procedure. Articles 245 to 249 deal in particular with re-opening upon request by a third party. Pursuant to Article 246, this is permissible where the third party has not participated in the proceedings at issue and the final judgment affects adversely its rights.

The Supreme Administrative Court has held that the third party's right to participate in the initial proceedings must have been "guaranteed by law" (*Решение № 2271 от 29.02.2016 г. на ВАС по адм. д. № 6587/2015 г., VI о.*, *Решение № 11979 от 11.11.2015 г. на ВАС по адм. д. № 6420/2015 г., II о.*). At the relevant time Article 240 of the Code provided that third parties could seek re-opening within three months after becoming aware of the judgment affecting them, but no later than a year after that judgment's entry into force.

28. Administrative judicial proceedings can be re-opened on a number of additional grounds, such as the discovery of new evidence or a finding that a witness has made false statements or a document has been forged (Article 239 of the Code of Administrative Procedure).

C. State Fund "Agriculture"

29. The State Fund "Agriculture" ("the Fund") was created in 1998 with the adoption of the Support for Agricultural Producers Act (*Закон за подпомагане на земеделските производители*). Section 11(1) of the Act stipulates that the Fund has legal personality and is financed by the State budget. The Fund's main tasks, defined in section 11(2) of the Act, are the following: to provide financial support to agricultural producers; to function as SAPARD Agency and as Paying Agency for agriculture, fisheries and rural development; to provide funding to other persons and perform further tasks when directed to do so under other legislation.

THE LAW

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

30. The applicant company complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 about the re-opening of the judicial proceedings and the quashing by the Supreme Administrative Court of its previous judgment of 15 April 2011.

31. 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 ..."

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."

A. Arguments of the parties

32. The Government argued that, in setting aside the judgment of 15 April 2011, the Supreme Administrative Court had duly applied the law. In challenging that judgment, the Minister of Finance had not acted as a representative of the executive, but as a "representative of the most general idea of public interest". Moreover, the setting aside of the judgment at issue had been "based on new facts" and had aimed to remedy "a mistake" of the judges having given it, namely the failure to account for the discontinuance of payments by the SAPARD following Bulgaria's accession to the European Union and the resulting need to pay the compensation awarded by the Supreme Administrative Court from the State budget. The subsequent examination of the applicant company's claim had shown that it had relied on forged or null and void documents and had unjustifiably sought to receive a subsidy under the SAPARD. When re-examining the applicant company's tort claim after the re-opening, the national courts had correctly dismissed that claim.

33. The applicant company pointed out that both the Fund and the Minister of Finance were State bodies and thus "emanations of the State power", and referred to previous judgments of the Court in which Bulgaria had been found in breach of Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 after judgments given against State or municipal bodies had been found not to be binding on other such bodies (*Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, 12 January 2006; *Decheva and Others v. Bulgaria*, no. 43071/06, 26 June 2012; *Chengelyan and Others v. Bulgaria*, no. 47405/07, 21 April 2016). The applicant company noted further that, while the damages awarded to it in the judgment of 15 April 2011 had indeed to be paid from the State budget, this only concerned the "technique of payment", and not the parties' standing in the tort proceedings brought by it. It rejected as groundless the Government's position that the re-opening of the proceedings had been based on new facts.

B. The Court's assessment

1. Admissibility

34. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

35. The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares, among other things, the rule of law to be part of the common heritage of the Contracting States. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Driza v. Albania*, no. 33771/02, § 63, ECHR 2007-V (extracts)). Legal certainty presupposes respect for the principle of *res judicata*, that is the principle of the finality of judgments. This principle underlines that no party is entitled to seek a review of a final and binding judgment merely for the purpose of obtaining a rehearing and a fresh determination of the case. Higher courts' power of review should be exercised to correct judicial errors and miscarriages of justice, but not to carry out a fresh examination. The review should not be treated as an appeal in disguise, and the mere possibility of there being two views on the subject is not a ground for re-examination. A departure from that principle is justified only when made necessary by circumstances of a substantial and compelling character (see *Ryabykh v. Russia*, no. 52854/99, § 52, ECHR 2003-IX; *Roşca v. Moldova*, no. 6267/02, § 25, 22 March 2005; *Giuran v. Romania*, no. 24360/04, § 30, ECHR 2011 (extracts)). The relevant considerations to be taken into account in this connection include, in particular, the effect of the re-opening and any subsequent proceedings on the applicant's individual situation (see *Lenskaya v. Russia*, no. 28730/03, § 33, 29 January 2009).

36. In the present case, the applicant company, after having brought a tort claim against the Fund following the rejection of its application for a subsidy, obtained a determination of that claim (see paragraphs 13-14 above). Soon after the Supreme Administrative Court's judgment of 15 April 2011, it obtained a writ of execution (see paragraph 15 above).

37. However, following the application of the Minister of Finance, relying on changes in relation to the operation of the SAPARD and resulting in changes in the payment of any compensation, the Supreme Administrative Court stayed execution of the judgment of 15 April 2011, held a hearing on the re-opening application, and in a judgment of 20 December 2011 set aside its previous judgment. It re-opened the proceedings, finding that the conditions of the Code of Administrative Procedure had been met (see paragraph 20 above).

38. In doing that, the Supreme Administrative Court relied on provisions aimed at guaranteeing the rights of third parties which have not participated but have had their rights affected by judicial proceedings. The Court has found that the protection of the rights and legal interests of such third parties can, in principle, represent a legitimate reason justifying the setting aside of

a final judgment, without being inconsistent with the principle of legal certainty (see *Protsenko v. Russia*, no. 13151/04, §§ 32-34, 31 July 2008, and *Karen Poghosyan v. Armenia*, no. 62356/09, § 47, 31 March 2016).

39. The Supreme Administrative Court found that the State, represented by the Minister of Finance, had been adversely affected by the judgment of 15 April 2011 and had the right to participate in the proceedings, which justified their re-opening and the re-examination of the case (see paragraph 20 above). In his application for re-opening the Minister had made in addition a number of arguments on the substance of the applicant company's claim (see paragraph 17 above).

40. The Supreme Administrative Court's judgment of 20 December 2011 was based on the fact that the applicant company had claimed compensation for the refusal of the subsidy under the SAPARD – a European Union programme aimed at financing pre-accession measures in the field of agriculture and rural development in several countries, including Bulgaria (see paragraph 6 above). After Bulgaria' accession to the European Union in 2007, payment under that programme had ceased, and the Supreme Administrative Court noted that any damage due by the Fund for its failure to grant a SAPARD subsidy to the applicant company before that programme's closure would have had to be paid instead by the State budget (see paragraph 20 above).

41. The Court, for its part, accepts the domestic court's finding that Article 246 of the Code of Administrative Procedure, setting out the conditions for re-opening of administrative judicial proceedings (see paragraph 27 above), was satisfied. It observes that, indeed, when acting as SAPARD Agency the Fund disbursed European Union funds and that, due to the programme's closure, the damage awarded to the applicant company in the impugned judgment of 15 April 2011 would have had to be paid from the State budget. Thus, it would appear that the State, represented by the Minister of Finance – the body responsible for administering the State budget – was indeed "adversely affected" by the said judgment.

42. The Court notes moreover that similar conclusions were reached in another case examined by the Supreme Administrative Court in 2015, also concerning the re-opening of proceedings for the examination of a tort action related to the receipt of a subsidy under the SAPARD (see paragraph 25 above). As to the other cases concerning tort actions against the Fund and other specialised governmental agencies under the State and Municipalities Responsibility for Damage Act (see paragraph 24 above), their examination without the participation of the Minister of Finance as representative of the State does not mean that, in the specific circumstances of the present case – which, as already noted, concerns the disbursing of European Union funds – considering the Minister an affected party with the right to participate was arbitrary.

43. The applicant company, in contesting the re-opening of the proceedings in its case, referred to several earlier cases against Bulgaria concerning *res judicata* and the stability of final judgments (see paragraph 33 above). However, the Court is of the view that the present case should be distinguished. The judgments relied on by the applicant company concerned the process of restitution, whereas the present case is set in a different context. Moreover, it does not concern, as did the earlier cases, separate proceedings in which a previous final judgment was disregarded, in some cases already after having been enforced (see *Kehaya and Others*, §§ 19-26, and *Chengelyan and Others*, §§ 11-14, both cited above). The case at hand concerns, as discussed above, the re-opening of tort proceedings initially concluded in the applicant company's favour under conditions provided for by law. Such re-opening cannot thus be said, as was the situation in the cases relied on by the applicant company (see in particular § 69 of *Kehaya and Others*), to offer the State an undue "second chance" to obtain a favourable outcome of a dispute already concluded by way of a final judgment.

44. Moreover, in the present case the Minister of Finance sought the re-opening of the tort proceedings initiated by the applicant company soon after the judgment of 15 April 2011 (see paragraph 16 above), and his right to seek such re-opening was limited by strict time-limits (see paragraph 27 above *in fine*). Consequently, the case did not concern a broad possibility to contest a final court judgment, such as in *Kehaya and Others*, which was found by the Court to be unbalanced and to engender legal uncertainty (see § 69 of the judgment).

45. Accordingly, the Court finds that the quashing of the judgment of 15 April 2011 in the applicant company's favour was aimed at guaranteeing the rights of a third party, as provided for under domestic law.

46. Moreover, the Court observes that after the applicant company's case was re-opened the domestic courts dismissed its tort claim on the basis of elements which had not been established before, namely the reliance by the applicant company in its application for a subsidy on documents which had been forged or were null and void (see paragraph 21 above). Thus, the re-opening seems to have legitimately served the purpose of correction of a previous judicial error.

47. As to the effect of the re-opening on the applicant company's individual situation – a criterion established by the Court in previous cases (see paragraph 35 above) – the Court observes that the judgment of 15 April 2011, even though considered final, was never enforced and, as already noted above, was contested by the Minister of Finance soon after having been delivered and in accordance with domestic legal provisions on re-opening (see paragraph 16 above). In addition, when the applicant company's tort claim was re-examined, the national courts concluded that no direct causal link existed between the damage claimed by it and the

Fund's failure to provide a subsidy. It was noted in particular that a subsidy could only be paid after the applicant company had itself made the planned investment and constructed the agricultural market, but this had not been done (see paragraph 21 above). The Court sees no reason to consider such conclusions contrary to Article 6 § 1 of the Convention.

48. In view of the above, the Court is satisfied that the re-opening of the proceedings and the quashing of the judgment of 15 April 2011 was made necessary by circumstances of a substantial and compelling character, as required in its case-law (see paragraph 35 above), and that it was not in breach of the principle of legal certainty.

49. Accordingly, there has been no violation of Article 6 § 1 of the Convention.

50. As regards the complaint under Article 1 of Protocol No. 1, whether or not the applicant company could be said to have had a legitimate expectation to receive the compensation originally awarded to it, the interference complained of was lawful. As indicated above, it was based on provisions of domestic law and the Court is satisfied that these provisions were applied in a manner compatible with Article 6 § 1 of the Convention. Moreover, the interference pursued a legitimate aim, namely the protection of the rights of the State as a party affected by a final judgment.

51. The Court has held that the authorities should not be prevented from correcting their mistakes, even those resulting from their own negligence, because holding otherwise would be contrary to the doctrine of unjust enrichment (see *Moskal v. Poland*, no. 10373/05, § 73, 15 September 2009; *Bogdel v. Lithuania*, no. 41248/06, § 66, 26 November 2013; *Danailov and Others v. Bulgaria* (dec.), no. 47353/06, § 53, 10 February 2015). Concerning the case at hand, the Court pointed out above that the quashing of the judgment of 15 April 2011 was aimed at correcting a mistake. As further discussed (see paragraph 47 above), there is no reason to consider that such quashing imposed an excessive individual burden on the applicant company. Seeing that, as established subsequently, it had relied on forged and null and void documents to support its application for a subsidy (see paragraph 21 above), the Court notes in addition that it could be questionable whether the company acted in good faith (see *Danailov and Others*, cited above, § 54).

52. In the light of the above, the Court holds that there has been no violation of Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;

2. Holds that there has been no violation of Article 6 § 1 of the Convention;

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

Done in English, and notified in writing on 5 September 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President