



Violations in withdrawal of banking licence and proceedings around winding up of KTB

In today's **Chamber judgment**¹ in the case of [Korporativna Targovska Banka AD v. Bulgaria](#) (applications nos. 46564/15 and 68140/16) the European Court of Human Rights held, unanimously, that there had been:

two violations of Article 6 (right to a fair trial) of the European Convention on Human Rights, and a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention.

The case concerned the withdrawal of the applicant bank's licence by the Bulgarian National Bank and the resulting court proceedings in which it was ordered that it be wound up.

In finding violations, the Court held, in particular, that: the relevant legislation and how it had been applied by the Bulgarian courts had denied KTB a proper judicial review of the decision to withdraw its licence; KTB had been represented in court by individuals dependent on the BNB and had not been able to put forward its case; and there had been no judicial or other legal safeguards against the decision to withdraw KTB's licence.

It also held under **Article 46 (binding force and implementation)** that the only way to put right the violation of the Convention relating to the impossibility for KTB to obtain proper judicial review of the withdrawal of its licence was to give it such a possibility, but that it did not necessarily follow that the form of redress following a possible finding that the decision to withdraw KTB's licence had been unlawful or unjustified should consist of the annulment of that decision and a reversal of its effects rather than of an award of compensation. The Court went on to say that the State should examine the relevant legislation to see if any gaps were causing repeated violations of this nature.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Korporativna Targovska Banka AD (KTB), was a bank based in Sofia licensed in 1994.

In 2014, following a number of criminal investigations related to KTB, a run on the bank occurred. On 20 June 2014 KTB informed the Bulgarian National Bank (BNB) that it was experiencing liquidity issues, and asked that measures be taken, including putting the bank in special administration. The BNB took a series of measures.

In November 2014 the BNB withdrew the bank's licence for its having a negative own-funds value, Common Equity Tier 1 capital ratio, and Tier 1 capital ratio. The BNB also stated that KTB's management had engaged in "vicious banking and business practices" and had submitted misleading reports about the bank.

Bromak EOOD, the majority shareholder, initiated judicial-review proceedings, which were then joined to other cases brought by other shareholders. The Supreme Administrative Court refused to

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

examine the claims, holding that only KTB – and not its shareholders – could challenge the decision to withdraw its licence.

In 2014-15 KTB's former executive directors likewise sought judicial review of the withdrawal of KTB's licence. They were unsuccessful at first instance and on appeal, with the courts holding that they did not have standing. Other similar applications by interested parties were also unsuccessful.

In 2014 the BNB also applied to have KTB wound up. The courts ruled that KTB would be represented by its BNB-appointed special administrators and then its liquidators, and dismissed applications to have an *ad litem* representative appointed. In 2015 the Sofia City Court declared the bank insolvent and ordered that it be wound up. After appeals by shareholders and former executive directors of the bank, that decision was upheld by the Sofia Court of Appeal and the Supreme Court of Cassation.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair trial), Article 1 of Protocol No. 1 (protection of property) to the Convention and Article 13 (right to an effective remedy), the applicant bank complained, in particular, of the decision to withdraw its licence, of its inability to have that decision judicially reviewed, and of the way in which it had been represented in the winding-up proceedings.

The application was lodged with the European Court of Human Rights on 17 September 2015.

Judgment was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,

Tim **Eicke** (the United Kingdom),

Faris **Vehabović** (Bosnia and Herzegovina),

Iulia Antoanella **Motoc** (Romania),

Yonko **Grozev** (Bulgaria),

Armen **Harutyunyan** (Armenia),

Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

Decision of the Court

[Article 6 § 1 concerning judicial review of withdrawal of licence](#)

According to the Court's case-law, a bank that has had its licence withdrawn must be able to challenge that decision before a court. The Government argued that it had been possible for KTB to do so.

However, such a withdrawal decision could not be stayed under the law and the BNB was obliged to appoint special administrators – who would act on the bank's behalf – immediately. None of the remedies cited by the Government would have prevented that situation from occurring.

Nobody apart from the special administrators had been able to persuade the Bulgarian courts that they had standing to seek judicial review of the decision, whereas the special administrators had been dependent on the BNB and had had no interest in doing so.

The Court held that the relevant legislation and how it had been applied by the Bulgarian courts had denied KTB a proper judicial review of the decision to withdraw its licence.

There had therefore been a violation of Article 6 § 1 of the Convention.

Article 6 § 1 concerning representation in winding-up proceedings

In the winding-up proceedings KTB had been denied the right to put forward its case, and attempts by KTB's former directors to do so had been rejected on grounds of standing. The Court noted that the two biggest shareholders of KTB had been able to intervene in the proceedings, but only as third parties without the right of appeal.

Ultimately, KTB had been represented by individuals dependent on the BNB and had not been able to put forward its case, in violation of Article 6 § 1 of the Convention.

Article 1 of Protocol No. 1

The Court had already established that KTB had not been able to obtain judicial review of the decision to withdraw its licence (which had almost automatically led to the decision to declare it insolvent and wind it up), or to put forward its case indirectly in the winding-up proceedings. No other procedural safeguards surrounded the BNB's decision to withdraw KTB's licence either. There had therefore been no safeguards against arbitrariness.

It followed that the interference with KTB's possessions had not been lawful, in violation of Article 1 of Protocol No. 1.

The Court emphasised that it expressed no opinion on whether the decision to withdraw KTB's licence had been correct in terms of Bulgarian law, or whether it had been in the general interest or had struck a fair balance between that general interest and KTB's right to the peaceful enjoyment of its possessions.

Other articles

Given its findings above, the Court ruled that it was not necessary to examine the complaints under Article 13 of the Convention.

Article 46 (binding force and enforcement of judgments)

The Court noted that the reopening of proceedings in cases such as this one would be in principle an appropriate way of redressing the breach. Nevertheless, the Court's judgments should not unduly upset the principles of *res judicata* and legal certainty in civil litigation. It reiterated that it did not necessarily follow that the form of redress following a possible finding that the BNB's decision to withdraw KTB's licence had been unlawful or unjustified should consist in the annulment of that decision and a reversal of its effects rather than in an award of compensation. However, the proceedings should be organised in a way which would give KTB an effective opportunity to contest the findings which prompted the BNB to withdraw its licence.

This had been the third case against Bulgaria involving banking licences, alongside [Capital Bank AD v. Bulgaria](#) (no. 49429/99) and [International Bank for Commerce and Development AD and Others v. Bulgaria](#) (no. 7031/05). The Court held that the State should examine if either gaps in the relevant legislation or the manner in which the Supreme Administrative Court had construed and applied that legislation were at the root of the violations in these cases. The State should also amend the problematic provisions in terms of representation in court proceedings (sections 11(3) and 16(1) of the Bank Insolvency Act 2002).

Just satisfaction (Article 41)

The Court dismissed KTB's claims in respect of pecuniary damage and costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.