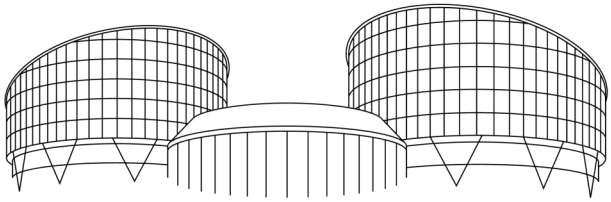

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF BACHVAROVI v. BULGARIA

(Application no. 24186/04)

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 Bachvarovi v. Bulgaria,

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre, *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. 24186/04) 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 two Bulgarian nationals, Mr Gancho Kolev Bachvarov and Mr Nikolay Ganchev Bachvarov ("the applicants"), on 2 July 2004.

2. The applicants were represented by Mr S. Lyuboslavov, a lawyer practicing in Varna. The Bulgarian Government ("the Government") were represented by their Agents, Mrs M. Dimova and Mrs N. Nikolova, of the Ministry of Justice.

3. The applicants alleged that they had been deprived of their property in violation of Article 1 of Protocol No. 1 and Article 8 of the Convention.

4. On 14 May 2008 the President of the Fifth Section 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 applicants were born in 1927 and 1951 respectively and live in Varna. They are a father and his son.

7. In 1959 the first applicant and his wife bought from the State, through the Ministry of Defence, an apartment of 115 square metres in the centre of Varna. The apartment had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and the following years. It had been a part of a bigger apartment, which had on an unspecified date before 1959 been divided into two smaller ones.

8. In the beginning of 1993 the heirs of the former pre-nationalisation owner of the property brought proceedings against the first applicant and his wife under section 7 of the Restitution Law.

9. In 2003 the first applicant's wife died and was inherited by the two applicants.

10. The proceedings under section 7 of the Restitution Law ended by final judgment of the Supreme Court of Cassation of 20 February 2004. The courts found that the applicants' title was null and void because the division of the initial bigger apartment into two smaller ones (see paragraph 7 above) had not been carried out in accordance with the law.

11. Immediately after the final judgment in their case, it became possible for the applicants to obtain compensation from the State, in the form of bonds which could be used in privatisation tenders or sold to brokers. The applicants did not avail themselves of this opportunity.

12. In December 2006 the heirs of the former owner of the apartment brought a *rei vindicatio* action and an action for damages against the first applicant who was still living in the apartment. The proceedings are still pending. The first applicant's request to be accommodated in a municipally-owned dwelling, lodged in 2004, has not yet been granted due to the unavailability of free apartments.

II. RELEVANT BACKGROUND FACTS, DOMESTIC LAW AND PRACTICE

13. These have been summarised in the Court' s judgment in the case of *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, 15 March 2007.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

14. The applicants complained that they had been deprived of their property arbitrarily, through no fault of their own and without adequate compensation. They relied on Article 1 of Protocol No. 1 and Article 8 of the Convention.

15. The Court is of the view that the complaint falls to be examined under Article 1 of Protocol No. 1, which 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."

16. The Government argued that the applicants had failed to exhaust domestic remedies because they had not sought compensation bonds. In any event, they urged the Court to conclude that there was no violation of Article 1 of Protocol No. 1, arguing that a fair balance had been achieved in the case between the public interest and the applicants' rights.

17. The applicants contested these arguments.

A. Admissibility

18. The Court notes the Government's objection for non-exhaustion of domestic remedies.

19. In this respect, it refers to its detailed reasoning in *Velikovi and Others*, where it found that at the relevant time the bonds compensation scheme did not secure adequate compensation with any degree of certainty (see *Velikovi and Others*, cited above, § 227). Furthermore, the Court has already examined an identical objection in a similar case and has rejected it (see *Dimitar and Anka Dimitrovi v. Bulgaria*, no. 56753/00, § 23, 12 February 2009). It does not see a reason to reach a different conclusion in the present case and, accordingly, dismisses the Government's objection.

20. The Court notes that the complaint 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

21. The Court notes that the present complaint concerns the same legislation and issues as in *Velikovi and Others*, cited above.

22. The events complained of constituted an interference with the applicants' property rights.

23. The interference was based on the relevant law and pursued an important aim in the public interest, namely to restore justice and respect for the rule of law. As in *Velikovi and Others* (cited above, §§ 162-176), the Court considers that in the particular circumstances the question whether the relevant law was sufficiently clear and foreseeable cannot be separated from the issue of proportionality.

24. Applying the criteria set out in *Velikovi and Others* (cited above, §§ 183-192), the Court notes that the applicants' title was declared null and void and they were deprived of their property on the sole ground that their flat had been part of a bigger apartment which had been divided by the State in violation of the applicable regulations (see paragraph 11 above). This deficiency is clearly attributable to authorities, not the applicants (see *Yurukova and Samundzhi v. Bulgaria*, no. 19162/03, § 24, 2 July 2009).

25. The Court considers therefore that the present case is similar to those of *Bogdanovi* and *Tzilevi*, examined in *Velikovi and Others* (see § 220 and § 224 of that judgment, cited above), where it held that in such cases the fair balance required by Article 1 of Protocol No. 1 could not be achieved without adequate compensation (see also *Yurukova and Samundzhi*, cited above, § 25).

26. The question thus arises whether adequate compensation was provided to the applicants.

27. Following the final judgment in their case they could have applied for compensation bonds but failed to do so. However, as the Court found in *Velikovi and Others*, cited above, § 226, and in a number of subsequent cases (see *Koprinarovi v. Bulgaria*, no. 57176/00, § 31, 15 January 2009; 2009; *Vladimirova and Others v. Bulgaria*, no. 42617/02, § 40, 26 February 2009; and *Peshevi v. Bulgaria*, no. 29722/04, § 23, 2 July 2009), owing to the instability of bond prices and frequent changes in the relevant rules, it could not be considered that at the time the bond scheme secured adequate compensation. Therefore, although it must be taken in consideration under Article 41, the applicants' failure to use the bond compensation scheme cannot affect decisively the outcome of the present complaint.

28. In these circumstances, the Court finds that no clear, timely and foreseeable opportunity to obtain adequate compensation was available to the applicants.

29. It follows that the fair balance between the public interest and the need to protect their rights was not achieved. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. In respect of pecuniary damage, the applicants claimed, jointly, the value of their apartment, reduced with the value of the compensation bonds they would have received had they applied for such bonds in 2004. In

accordance with a valuation prepared by two experts appointed by them, they assessed that sum to be 123,660 euros (EUR).

32. In respect of non-pecuniary damage, the applicants claimed EUR 25,000.

33. The Government considered these claims to be excessive.

34. Applying the approach set out in similar cases and in view of the nature of the violation found, the Court finds it appropriate to fix a lump sum in respect of pecuniary and non-pecuniary damage with reference to the value of the property taken away from the applicants and all other relevant circumstances (see *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, §§ 10 and 47, 24 April 2008). The Court will also take into account the applicants' failure to use the bond compensation scheme (see paragraph 28 above and *Todorova and Others*, cited above, §§ 44-46).

35. Having regard to the above, to all the circumstances of the case and to information at its disposal about real property prices in Varna, the Court awards, jointly to the two applicants, EUR 80,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

36. The applicants claimed EUR 2,000 for legal work by their lawyer after the communication of the present application. In support of the claim they submitted a contract for legal representation in which that remuneration was agreed upon.

37. They also claimed 465.30 Bulgarian levs, the equivalent of approximately EUR 240, for postage and translation and for the cost of the valuation report they submitted. They submitted the relevant receipts.

38. The Government urged the Court to reject these claims.

39. According to the Court's case-law, an applicant is entitled to reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum.

40. In the present case, regard being had to the information in its possession and the above criteria, the Court, noting that the just satisfaction claims were supported by relevant evidence, but that the exact volume, time and type of legal work done were not indicated, and also that the applicants' lawyer did not represent them at the initial stage of the proceedings, considers it reasonable to award the sum of EUR 1,500 covering costs and expenses under all heads.

C. Default interest

41. 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 a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay jointly to the two 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 Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 80,000 (eighty thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, 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;

4. *Dismisses* the remainder of the applicants' 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