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

FIFTH SECTION

CASE OF DIMITAR AND ANKA DIMITROVI v. BULGARIA

(Application no. 56753/00)

JUDGMENT

STRASBOURG

12 February 2009

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 Dimitar and Anka Dimitrovi v. Bulgaria,

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 20 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 56753/00) 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 Dimitar Angelov Dimitrov and Mrs Anka Vasileva Dimitrova ("the applicants"), on 23 November 1999.

2. The applicants were represented by Mr T. Borodjiev and Mr I. Maznev, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs S. Atanasova 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 6 of the Convention.

4. On 9 November 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on its admissibility and merits at the same time (Article 29 § 3).

5. The applicants and the Government each submitted observations on the admissibility and merits of the case (Rule 59 § 1).

6. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 1 October 2008, the Government, pursuant to Rule 29 § 1 (a), informed the Court that they had appointed in her stead another elected judge, namely Judge Lazarova Trajkovska.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1942 and 1946 respectively and live in Sofia.

8. In 1972 the applicants purchased from the Sofia municipality a three-room apartment of seventy-four square metres located in a three-storey building in the centre of the city. The apartment had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and the following several years.

9. In November 1992 some of the heirs of the former pre-nationalisation owner brought proceedings against the applicants under section 7 of the Restitution Law.

10. As the proceedings had not been brought by all heirs of the pre-nationalisation owner, they only concerned half of the applicants' apartment. The proceedings ended by a final judgment of the Supreme Court of Cassation of 26 May 1999.

11. The courts found that the applicants' title was null and void because the area where the apartment was located had been earmarked for construction of buildings of more than three storeys, according to the Sofia building plan of the 1970s, and the relevant legislation prohibited the sale of apartments in three-storey buildings located in such areas.

12. In 1998 and 1999 other heirs of the pre-nationalisation owner brought proceedings against the applicants under section 7 of the Restitution Law seeking to recover the remaining half of the apartment. It appears that those proceedings were terminated as time-barred.

13. In 1999 the applicants requested to be accommodated as tenants in a municipal dwelling. This was refused as they still owned one half of the apartment.

14. In 2000 the applicants vacated half of the apartment, which the restored owners started to use.

15. The applicants vacated the whole apartment in 2005 when they and the restored owners sold their respective parts of the property to a third party. The applicants received 70,000 euros (EUR). On an unspecified date the new owner demolished the building.

16. In 1998 the applicants requested compensation bonds. On 17 April 2001 the regional governor granted the request and ordered that an expert be appointed to assess the value of the property. On 6 June 2001 the governor issued another order rectifying an obvious error in the first one. The applicants did not visit the governor's office to receive the new order and the proceedings were apparently stayed.

II. RELEVANT BACKGROUND FACTS, DOMESTIC LAW AND PRACTICE

17. The relevant background facts and domestic law and practice 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.

18. Shortly after the adoption of that judgment, on 8 May 2007 the Government published regulations implementing section 7 (3) of the Restitution Law (State Gazette no. 37 of May 2007). The regulations enable persons currently in possession of housing compensation bonds to obtain payment at face value from the Ministry of Finance.

THE LAW

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

19. The applicants complained that they had been deprived of their property – in this case half of an apartment – in violation of Article 1 of Protocol No. 1 to the Convention, 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."

20. With reference to the criteria adopted by the Court in its V*elikovi and Others* judgment, cited above, the Government argued that the interference with the applicants' rights had been proportionate as the 1972 contract had been concluded in material breach of the relevant law. In any event, a fair balance between the public interest and the applicants' rights was achieved as the applicants had only been deprived of half the apartment and had been able to use the other half until 2005. Furthermore, following the adoption of regulations implementing section 7 (3) of the Restitution Law (see above, Relevant background facts, domestic law and practice) adequate compensation was available to the applicants. In this respect, it had to be noted that the applicants' request for compensation bonds had

been granted and that it had been only because of their inaction that the compensation procedure had been stayed.

21. The applicants reiterated their arguments that the deprivation of property had been arbitrary. They contended that no adequate compensation was available to them as the compensation procedure had been delayed for years. This delay was attributable to the authorities who had failed to notify the applicants of any developments following the order of the regional governor of 17 April 2001.

A. Admissibility

22. The Court considers that the Government's arguments in respect of the pending compensation procedure represent in substance an objection for non-exhaustion of domestic remedies. Accordingly, the Court must examine this objection.

23. It recalls that in the case of *Velikovi and Others*, cited above (see §§ 226-227 concerning in particular the case of *Tsilevi*), it found that for a long period of time the bond compensation scheme provided no clear opportunity to obtain adequate compensation and that the legislation on compensation for persons in the applicants' position changed frequently and could not be characterised as foreseeable. Therefore, in 2001 when the applicants abandoned the compensation procedure and renounced their right to receive bonds, obtaining compensation through bonds did not represent an effective domestic remedy.

24. The fact that a new opportunity to receive in cash the full face value of compensation bonds was introduced in May 2007, which only concerned persons who were still in possession of such bonds or received them after this date, does not affect the Court's conclusion. This is so because the assessment of whether domestic remedies have been exhausted is normally carried out with reference to the date on which the application was lodged with the Court. This rule is subject to exceptions, which may be justified by the particular circumstances of each case (see *Prodan v. Moldova*, no. 49806/99, §§ 38-39, ECHR 2004-III (extracts)). However, in the case at hand the Court does not see particular circumstances justifying a departure from the general rule, bearing in mind that (1) there did not exist an effective domestic remedy enabling the applicants to receive adequate compensation for nearly eight years after the lodging of the present application, and (2) the Government have not shown convincingly that in 2007 it was still possible for the applicants to obtain a valuation of their demolished apartment and bonds for it. Accordingly, the Court dismisses the Government's objection for non-exhaustion of domestic remedies.

25. The Court also finds 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

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

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

28. The interference was based on the relevant law and pursued an important aim in the public interest – 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.

29. Applying the criteria set out in *Velikovi and Others*, cited above, §§ 183-192, the Court notes that the applicants' title to half the flat at issue was declared null and void and they were deprived of their property on the sole ground that the municipality had decided to sell a flat in a three-storey building in an area where higher buildings had been planned (see paragraph 11 above). The Court has already dealt with a case where the same defect had led to the annulment of the applicants' title and found that such a shortcoming could not be characterised as a material breach of the relevant housing regulations. It also found that in so far as the municipality's decision violated relevant building planning rules, the responsibility for this error lay entirely with the municipal authorities (see *Bornazovi v. Bulgaria* (dec.), no. 59993/00, 18 September 2007). The Court sees no reason to reach a different conclusion in the present case. As in *Bornazovi*, it notes that the Government never claimed that the sale of the flat to the applicants had impeded the realisation of the building plan, which, moreover, was apparently abandoned. In sum, the Court finds that the State administration, not the applicants, had been responsible for the defect that led to the annulment of their property title.

30. The Court considers that the present case is therefore similar to those of *Bogdanovi* and *Tzilevi*, examined in its *Velikovi and Others* judgment (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 to the Convention could not be achieved without adequate compensation.

31. The applicants in the instant case decided not to seek compensation through bonds (see paragraph 15 above). Their case is thus similar to the case of *Tzilevi* examined in *Velikovi and Others* (see §§ 94 and 226-228). Like in *Tzilevi*, the Court considers that the applicants forewent the opportunity to obtain at least between 15 and 25 per cent of the value of the apartment, as that was the rate at which bonds were traded until the end of 2004. The fact that bond prices rose at the end of 2004 or that the applicable law was amended with practical effect from May 2007 and provided for payment of the bonds at face value cannot lead to the conclusion that the

authorities would have secured adequate compensation for the applicants but for their refusal to receive bonds. The applicants could not have foreseen bond prices or legislative amendments and the Court cannot speculate whether they would have waited four or more years before cashing their bonds. Furthermore, the legislation on compensation changed frequently and was not foreseeable (see *Velikovi and Others*, cited above, §§ 191 and 226).

32. In these circumstances, the Court finds that no clear and foreseeable possibility to obtain compensation was secured to the applicants. Their failure to use the bond compensation scheme will have to be taken into consideration under Article 41, but cannot decisively affect the outcome of their Article 1 Protocol 1 complaint.

33. There has therefore been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

34. The applicants complained under Article 6 § 1 that in their case the national courts had decided arbitrarily.

A. Admissibility

35. The Court finds 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

36. Having regard to its conclusions under Article 1 of Protocol No. 1, the Court is of the view that it is not necessary to examine the complaint under Article 6 § 1 separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The property the applicants lost was one half of a three-room apartment of 74 square metres in a building in the centre of Sofia, which has since been demolished.

39. Referring to the fact that in 2005 they had sold the half of the apartment they had retained for EUR 70,000, and taking into account the rise in prices since then, the applicants claimed EUR 105,000 in respect of the market value of the half they had lost. They also claimed EUR 16,800 in lost income from rent from 1999 to 2005.

40. In respect of non-pecuniary damage, the applicants claimed EUR 40,000. They submitted that the second applicant's health had deteriorated as a result of the anguish related to the loss of the property.

41. The Government did not comment.

42. 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).

43. To determine the amount to be awarded, the Court recalls that it found that the applicants' failure to use the bond compensation scheme would have to be taken into consideration under Article 41 of the Convention (see paragraph 32 above). It notes that had the applicants made use of that scheme, they could have obtained between 15 and 25 per cent of the value of half of the flat at issue. The Court considers therefore that it must apply an appropriate reduction of the just satisfaction award on account of the applicants' failure to make use of this possibility to obtain partial compensation (see *Todorova and Others*, cited above, §§ 44-46).

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

B. Costs and expenses

45. The applicants claimed EUR 8,000 for legal work by their lawyers. They submitted a copy of a legal fees' agreement. They also claimed EUR 800 for postage and for copying and certifying documents.

46. The Government considered the claim for legal fees excessive and urged the Court to dismiss the claim for expenses for mailing, copying and certifying as it was not supported by receipts or any other documents.

47. 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 present case, regard being had to the information in its possession and to the complexity of the case, the Court awards EUR 2,500 for legal fees. It dismisses the claim for expenses for postage, copying and certifying as the applicants have not submitted any documents showing that these expenses were actually incurred.

C. Default interest

48. 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* that it is not necessary to examine separately the applicants' complaint under 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicants jointly, 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 35,000 (thirty-five thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 2,500 (two 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;

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

Done in English, and notified in writing on 12 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President