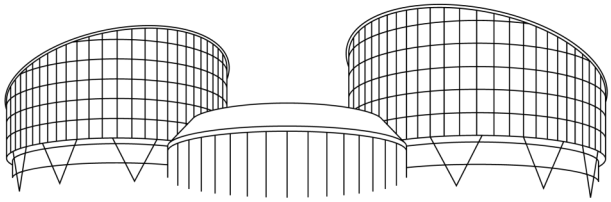

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GEORGIEVA AND MUKAREVA v. BULGARIA

(Application no. 3413/05)

JUDGMENT

STRASBOURG

2 September 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 Georgieva and Mukareva 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 Stephen Phillips, *Deputy Section Registrar,*

Having deliberated in private on 6 July 2010,

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

PROCEDURE

1. The case originated in an application (no. 3413/05) 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, Ms Dimka Nedelcheva Georgieva and Ms Krasimira Nikolova Mukareva ("the applicants"), on 17 December 2004.

2. The applicants were represented by Ms S. Margaritova-Vuchkova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Ms N. Nikolova and Ms M. Dimova, 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 Articles 6 § 1, 13 and 14 of the Convention.

4. On 2 March 2009 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 of the Convention).

5. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 24 March 2010 the Government appointed in her stead Ms Pavlina Panova as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of the Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1935 and 1957 respectively and live in Varna. They are mother and daughter.

7. In 1985 the first applicant and her husband bought from the Varna municipality an apartment of 54 square metres, situated in the centre of the city, which had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria after 1945.

8. On an unspecified date after that the first applicant's husband died and his property was inherited by the two applicants.

9. In February 1992 the Restitution Law entered into force.

10. On 8 July 1992 one of the heirs of the former pre-nationalisation owner of the flat brought proceedings against the applicants under section 7 of the Restitution Law. In a final judgment of the Supreme Court of Cassation of 7 July 1997 the action was allowed partially, the domestic courts finding that the plaintiff could only claim half of the property.

11. The courts found that the applicants' title over half of the property was null and void on two grounds: 1) their apartment had been part of a bigger apartment, which had, prior to 1985 and in breach of the relevant construction requirements, been divided by the State into two; and 2) the area where the apartment was located had been earmarked for the construction of buildings of more than three storeys and the applicants' building was of two storeys; the relevant legislation at the time prohibited the sale of apartments in such buildings.

12. On 20 November 1998 the applicants requested to be compensated with compensation bonds for half of the property. The request was granted and in January 2003 the applicants received bonds for 10,300 Bulgarian levs (BGN), the equivalent of approximately 5,280 euros (EUR), in accordance with an expert valuation of a half of their apartment drew up in 2001 or 2002. On 25 November 2004 the applicants sold their bonds for approximately 50% of their face value and received BGN 5,145, the equivalent of EUR 2,640.

13. In the meantime, on 8 December 1997, following a legislative amendment whereby the time-limit to bring an action under section 7 of the Restitution Law was renewed, the remaining heirs of the former pre-nationalisation owner brought such an action against the applicants regarding the second half of the apartment.

14. The action was granted in a final judgment of the Supreme Court of Cassation of 14 July 2004. Putting forward arguments identical to the ones concerning the first half of the apartment (see paragraph 11 above), the

courts found that the applicants' title to the second half of the property was likewise null and void.

15. The applicants did not apply for compensation bonds for that half of the apartment, as they were entitled to.

16. On several occasions after 1997 the first applicant requested to be provided with municipal housing but was informed that no such housing was available. By 2003 the two applicants and the second applicant's family were still living in the disputed flat. In December 2003 they vacated it and rented another apartment. In 2004 the second applicant bought another flat and her family and the first applicant moved in there.

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 judgments in the cases 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) and *Tsonkovi v. Bulgaria* (no. 27213/04, §§ 14-15, 2 July 2009).

THE LAW

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

18. The applicants complained that 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 Articles 6 § 1, 13 and 14 of the Convention.

19. The Court considers that the complaint falls to be examined solely under Article 1 of Protocol No. 1, which reads as follows:

> "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. The Government argued that, in so far as it concerned the first half of the disputed apartment, the applicants' complaint had been submitted

outside the time-limit provided for under Article 35 § 1 of the Convention as the final domestic decision in the proceedings under section 7 of the Restitution Law had been given on 7 July 1997 (see paragraph 10 above). In any event, the Government considered that the taking of the applicants' property had pursued a legitimate aim in the public interest and had been proportionate to that aim. In so far as the complaint concerned the second half of the apartment, the Government pointed out that the applicants had been entitled to seek compensation through bonds.

21. The applicants contested these arguments.

A. Admissibility

22. As the Government indicated (see paragraph 20 above), the domestic proceedings under section 7 of the Restitution Law concerning the first half of the applicants' property ended on 7 July 1997, whereas the present application was lodged on 17 December 2004 (see paragraphs 1 and 10 above). The Court must therefore examine whether the applicants have complied with the six-month rule under Article 35 § 1 of the Convention.

23. In a number of cases similar to the ones examined in *Velikovi and Others* (cited above) the Court has held that where the relevant events concerned not only the deprivation of property, but also ensuing developments concerning the right to compensation, they should be viewed as a situation continuing until any compensation issues were settled (see *Shoilekovi and Others v. Bulgaria* (dec.), nos. 61330/00, 66840/01 and 69155/01, 18 September 2007, *Kayriakovi v. Bulgaria*, no. 30945/04, § 24-29, 7 January 2010, and *Georgievi v. Bulgaria*, no. 10913/04, §§ 26-27, 7 January 2010).

24. The Court sees no reason to depart from this approach in the present case and finds therefore that the relevant events should be viewed as a situation continuing after the final court decision depriving the applicants of the first half of their property and until their right to compensation was realised with finality. This occurred on 25 November 2004 when the applicants sold their compensation bonds (see paragraph 12 above). The present application was lodged on 17 December 2004, less than six months after the above date, and also less than six months after 14 July 2004, the date of the final judgment concerning the second half of the apartment (see paragraph 14 above). Accordingly, the Court concludes that the six-month time-limit under Article 35 § 1 of the Convention has been complied with.

25. Furthermore, the Court considers that the present complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or 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 *Velikovi and Others* (cited above).

27. The interference with the applicants' property rights was based on the Restitution Law, which pursued in principle an important aim in the public interest, namely to restore justice and respect for the rule of law in the transitional period after the fall of the totalitarian regime in Bulgaria.

28. Turning to the question of whether the interference with the applicants' rights fell within the scope of that legitimate aim and if so, whether it was proportionate, the Court considers it appropriate to examine separately the circumstances concerning the first and second halves of the applicants' apartment.

1. The first half of the apartment

29. Applying the criteria set out in *Velikovi and Others* (cited above, §§ 183-192), the Court considers that in respect of the first half of the applicants' apartment there was no deviation from the transitional character of the restitution legislation, since the action under section 7 of the Restitution Law was brought in July 1992 (see paragraph 10 above), that is, within the initial one-year time-limit following the Restitution Law's entry into force.

30. The applicants' title to the first half of the apartment was declared null and void, on the first place, because their apartment had been part of a bigger apartment, which had, in breach of the relevant construction requirements, been divided into two by the State (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, and *Bachvarovi v. Bulgaria*, no. 24186/04, § 24, 7 January 2010).

31. The domestic courts also found that the applicants' title to the first half of their apartment was null and void because the municipality had decided to sell to the first applicant and her husband a flat in a two-storey building in an area where higher buildings had been planned (see paragraph 11 above). The Court has already dealt with similar cases (see *Dimitar and Anka Dimitrovi v. Bulgaria*, no. 56753/00, § 29, 12 February 2009, and *Bornazovi v. Bulgaria* (dec.), no. 59993/00, 18 September 2007) and has found that such a shortcoming could not be characterised as a material breach of the relevant housing regulations, and that, furthermore, in so far as the municipality's decision violated relevant building planning rules, the responsibility for this error lay entirely with the municipal authorities. The Court sees no reason to reach different conclusions in the present case.

32. In view of the foregoing, the Court concludes that the State administration was responsible for the defects that led to the annulment of the applicants' title to the first half of the property. Therefore, it considers

that in so far as it concerns the first half of the property the present case is similar to those of *Bogdanovi* and *Tzilevi*, examined in *Velikovi and Others* (cited above, §§ 220 and 224), and that, accordingly, the fair balance required by Article 1 of Protocol No. 1 could not be achieved without adequate compensation.

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

34. The applicants took all necessary steps under the bond compensation scheme as it operated at the time but only obtained the equivalent of EUR 2,640, about 50% of the value of a half of their apartment as of 2001 or 2002 when it was accessed by an expert (see paragraph 12 above).

35. The Court considers that there were no circumstances justifying this inadequate compensation. It thus finds that in respect of the first half of the applicants' apartment the authorities failed to strike a fair balance between need to protect the applicants' rights and the public interest.

2. The second half of the apartment

36. The Court notes that the action against the applicants regarding the second half of the apartment was not brought within the initial one-year time-limit after the adoption of the Restitution Law in 1992, but in July 1997, after that time-limit had been renewed (see paragraph 13 above).

37. In the case of *Velikovi and Others* (cited above, see §§ 166, 172, 179 and 189 of the judgment), the Court found that the measures introduced by section 7 of the Restitution Law – which authorised the challenging of decades-old property titles and the taking of private property as compensation for the nationalisations carried out by the State in the 1940s – could only be seen as proportionate to the legitimate aim of restoring justice where applied as an exceptional transitional step of short duration in the period of social transformation from a totalitarian regime to democracy.

38. In the case of *Tsonkovi* (cited above), where, similarly to the present case, the action under section 7 of the Restitution Law had been brought after the expiry of the initial time-limit in 1993 and its renewal in 1997, the Court found that the interference with the applicants' property rights could not be seen as falling within the scope of the legitimate aims that the restitution legislation pursued in principle and was in disregard of the principle of legal certainty. The Court held that nothing short of payment reasonably related to the market value of the flat lost could have maintained the requisite fair balance under Article 1 of Protocol No. 1 (see §§ 24-27 of the judgment).

39. The Court sees no reason to apply a different approach in the case in hand, in so far as it concerns the second half of the applicants' apartment. Therefore, similarly to *Tsonkovi*, it finds that the interference with the applicants' property rights disregarded the principle of legal certainty and that nothing short of compensation reasonably related to the market value of

the second half of the apartment could restore the fair balance required under Article 1 of Protocol No. 1.

40. However, the applicants have not received the market value of the second half of their apartment and the Government have not shown that compensation reasonably related to the market value of the second half of the apartment was secured to them with sufficient clarity and certainty (see *Tsonkovi*, cited above, § 28)

3. Conclusion

41. In view of the foregoing, the Court concludes that the taking of applicants' property did not meet the requirements of Article 1 of Protocol No. 1 and that there has therefore been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

42. 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

43. In respect of pecuniary damage the applicants claimed jointly the value of the apartment they had lost. They presented a valuation report prepared in September 2009 by experts commissioned by them, assessing the value of the apartment at EUR 61,000 euros.

44. In respect of pecuniary damage, the applicants also claimed BGN 900, the equivalent of EUR 460, paid by them for rent after they had vacated the apartment (see paragraph 16 above). Referring to the fact that the second applicant had to take a bank loan to buy a new apartment, they claimed another EUR 8,092, equalling the sum she had paid in interest between 2004 and 2009. In support of those claims they submitted the relevant receipts.

45. In respect of non-pecuniary damage, the applicants claimed EUR 14,000.

46. The Government contested these claims.

47. In view of its conclusions on the merits of the applicants' complaints, the Court considers it appropriate to award a lump sum covering both pecuniary and non-pecuniary damage (see, *mutatis mutandis*, *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, § 10, 24 April 2008). In assessing those damages, it will take into account its findings above in respect of the two

halves of the applicants' apartment (see paragraphs 29-40 above) and the fact that the applicants received EUR 2,640 from the sale of the compensation bonds they had awarded for the first half of the property (see paragraph 12 above).

48. Having regard to the above, all the circumstances of the case and the information at its disposal about real property prices in Varna, the Court awards jointly to the two applicants EUR 49,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

49. The applicants claimed EUR 2,580 for forty-three hours of legal work by their lawyer, Ms S. Margaritova-Vuchkova, at an hourly rate of EUR 60. In support of this claim they presented a contract for legal representation and a time sheet. They requested that any sum awarded under this head be paid directly into Ms Margaritova-Vuchkova's bank account, apart from 800 Bulgarian levs (BGN), the equivalent of EUR 410, already paid by them for her work.

50. The applicants claimed another BGN 472.80, the equivalent of EUR 240, for translation and postage for the proceedings before the Court and for the cost of the valuation report they presented (see paragraph 43 above), and BGN 1,078, the equivalent of EUR 550, for expenses incurred by them in the domestic proceedings under section 7 of the Restitution Law. In support of these claims, amounting to EUR 790 in total, the applicants presented the relevant receipts.

51. The Government contested the applicants' claims.

52. In respect of the Ms Margaritova-Vuchkova's legal fees, the Court considers that the number of hours of work claimed is excessive. In view thereof, and also noting that Ms Margaritova-Vuchkova has represented other applicants in identical cases (see, for example *Panayotova v. Bulgaria*, no. 27636/04, 2 July 2009, and *Tsonkovi*, cited above), the Court awards EUR 2,000 under this head, EUR 410 of which to be paid to the applicants and the remainder, EUR 1,590, directly into the bank account of Ms Margaritova-Vuchkova.

53. In respect of the remaining claims, the Court, having regard to the information in its possession, finds that the costs and expenses claimed were actually and necessarily incurred and are reasonable as to quantum. It thus awards the whole sum sought, that is, EUR 790, to be paid to the applicants.

C. Default interest

54. 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 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 49,000 (forty-nine thousand euros) in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable;

(ii) EUR 2,790 (two thousand seven hundred ninety euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, EUR 1,590 (one thousand five hundred ninety euros) of which is to be paid directly into the bank account of the applicants' legal representative;

(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 2 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Peer Lorenzen
Deputy Registrar	President