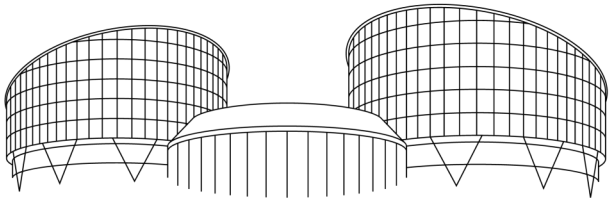

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF GEORGIEVI v. BULGARIA

(Application no. 10913/04)

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 Georgievi v. Bulgaria,

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

Peer Lorenzen, *President,*
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *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. 10913/04) 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 Belyu Dimitrov Georgiev and Mrs Bona Petrova Georgieva ("the applicants"), on 12 March 2004.

2. On 6 December 2008 the first applicant, Mr Belyu Dimitrov Georgiev, passed away. By a letter of 17 January 2009, his daughter, Mrs Emilia Belyuva Georgieva, and his wife, the second applicant, informed the Court that they wished to continue the present application in his stead.

3. The applicants were represented by Mrs S. Margaritova-Vuchkova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs S. Atanasova, of the Ministry of Justice.

4. The applicants alleged that they had been deprived of their property in violation of Article 1 of Protocol No. 1 and Articles 13 and 14 of the Convention.

5. On 6 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).

6. 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 the Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1926 and 1927 respectively. The second applicant lives in Sofia. The two applicants were spouses.

8. In 1966 they bought from the Sofia municipality an apartment of 81 square metres, located in the centre of the city, which had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and the following years.

9. At the beginning of 1993 the heir of the former pre-nationalisation owners of the property brought proceedings against the applicants under section 7 of the Restitution Law.

10. By judgments of 24 September 1996 and 10 July 1998 the Sofia District Court and the Sofia City Court allowed the claim. They found the applicants' title to be null and void on two grounds: 1) no decision of the mayor to initiate the sale procedure had been found in the case file; nor had the applicants established that such a decision had existed but had been lost or destroyed; 2) the sale had not been approved by the Minister of Finance, as required by law, but by one of his deputies.

11. The applicants did not submit a petition for review (cassation).

12. On an unspecified date in 1998 they vacated the apartment. In May 1999 they were granted the tenancy of a municipal apartment of 51 square metres.

13. Following the judgment of 10 July 1998 the applicants applied to receive compensation bonds, which could be used in privatisation tenders or sold to brokers. In December 2000 they obtained bonds with a total face value of 62,400 Bulgarian levs (BGN), in accordance with a valuation of the apartment prepared by an expert.

14. On 9 July 2003 the second applicant sold her half of the bonds for BGN 7,434.01, the equivalent of 3,810 euros (EUR).

15. On 17 February 2004 the first applicant sold his half of the bonds for BGN 7,387.68, the equivalent of EUR 3,780.

II. RELEVANT BACKGROUND FACTS, DOMESTIC LAW AND PRACTICE

16. The relevant background facts, 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.

THE LAW

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

17. 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 Articles 13 and 14 of the Convention.

18. 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."

19. The Government argued that the applicants had failed to exhaust domestic remedies, as required by Article 35 § 1 of the Convention, because they had not submitted a petition for review (cassation) against the Sofia City Court's judgment of 10 July 1998 (see paragraph 11 above). Furthermore, they argued that there was no violation of Article 1 of Protocol No. 1 in the case as the applicants had received compensation through bonds and had soon after vacating their apartment been provided with the tenancy of a municipally-owned flat.

20. The applicants disputed these arguments.

A. Admissibility

1. The Government's objection on non-exhaustion of domestic remedies

21. The Court notes that under Article 35 § 1 of the Convention the only remedies required to be exhausted are those that are effective and capable of redressing the alleged violation (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-II). It notes further that in most cases an applicant claiming a breach of Article 1 of Protocol No. 1 allegedly resulting from decisions of the Bulgarian courts must take the opportunity to submit a cassation appeal (or, as regards older cases such as the present one, a "petition for review") to the Supreme Court of Cassation (or, as regards

older cases, the Supreme Court) before bringing his grievance to the attention of the European Court of Human Rights (see *Raichinov v. Bulgaria* (dec.), no. 47579/99, 1 February 2005).

22. However, in a recent case similar to the present one, the Court found that a cassation appeal was not an effective remedy and that the applicants were not bound to make use of it. In that case, the applicants' title to an apartment bought from the State had been found null and void under section 7 of the Restitution Law because a relevant document concerning the sale had been signed by the deputy to the official in whom the relevant power had been vested. Referring to the Supreme Court of Cassation's established practice, according to which such administrative omissions resulted in property titles being considered null and void, the Court concluded that any attempt by the applicants to argue before the Supreme Court of Cassation that the authorities' omission in their case should not result in their title being declared null and void had been bound to fail (see *Vladimirova and Others v. Bulgaria*, no. 42617/02, §§ 10 and 24-27, 26 February 2009).

23. The Court does not see a reason to reach a different conclusion in the present case. It notes that even if the applicants could obtain a finding in their favour in respect of the first ground for declaring their title null and void (see paragraph 10 above) arguing before the Supreme Court of Cassation that it had not been their fault that a decision of the mayor to initiate the sale procedure could no longer be found in the case file, any attempt on their part to also argue that their title should not be declared null and void on the ground that the sale had not been approved by the Minister of Finance but by one of his deputies (the second ground for declaring their title null and void) was, similarly to the case of *Vladimirova and Others*, bound to fail.

24. The Court considers therefore that in the specific circumstances of this case a petition for review (cassation) did not represent an effective remedy to be exhausted in accordance with Article 35 § 1 of the Convention. Accordingly, the applicants' failure to pursue that remedy cannot result in their application being dismissed for its non-exhaustion.

2. The six-month rule

25. The Court notes furthermore that the judicial proceedings in the applicants' case ended on 10 July 1998, whereas the present application was lodged on 12 March 2004 (see paragraphs 1 and 10 above). The Court must therefore examine whether in the case the applicants have complied with the six-month rule under Article 35 § 1 of the Convention.

26. In a number of cases similar to *Velikovi and Others*, cited above, the Court found that the relevant events should be viewed as a continuing situation, as they concerned not only deprivation of property but also the ensuing right to compensation which was the subject of legislative

developments and changes of practice at least until 2007 (see *Shoilekovi and Others v. Bulgaria* (dec.), nos. 61330/00, 66840/01 and 69155/01, 18 September 2007). In the case of *Vladimirova and Others*, cited above, also similar to *Velikovi and Others*, the Court reiterated that the events should be viewed as a continuing situation until the compensation issues were settled (see § 30 of the judgment).

27. In the present case, having regard to its conclusions in the cases referred to above, the Court also considers that the relevant events should be viewed as a situation continuing after the final court decision depriving the applicants of their property and concerning the ensuing compensation. A question however arises as to the end date of that continuing situation. The Court is of the view that it ended when the applicants' right to compensation was realised with finality. This occurred when they sold their respective shares of the bonds received as compensation; after that they were no longer affected by the relevant legislative developments and changes of practice concerning compensation.

28. The Court observes that the first applicant sold his half of the bonds on 17 February 2004 (see paragraph 15 above). As the present application was lodged on 12 March 2004, less than six months after that, the six-month time-limit under Article 35 § 1 has been complied with.

29. However, the second applicant sold her compensation bonds on 9 July 2003 and her complaint under Article 1 of Protocol No. 1 was raised on 12 March 2004, that is, more than six months later (see paragraphs 1 and 14 above). The second applicant's complaint is therefore time-barred and must be declared inadmissible.

3. Other grounds for admissibility

30. The Court finds that the first applicant's complaint under Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and not inadmissible on any other ground. It must therefore be declared admissible.

B. Merits

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

32. The events complained of constituted an interference with the first applicant's property rights.

33. 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, §§ 162-76, 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.

34. Applying the criteria set out in *Velikovi and Others* (cited above, §§ 183-192) the Court notes that the first applicant's title was declared null and void and he was deprived of his property, on the first place, because no decision of the mayor to initiate the sale procedure had been found in the file concerning the sale of the apartment and the applicants had not established that such a decision had existed but had been lost or destroyed (see paragraph 10 above). However, the national courts did not find expressly that no decision of the mayor to initiate the sale procedure had been taken at the time; rather, they concluded that the document could not be found in the case file concerning the apartment's sale. As the case file had been kept by the authorities, the Court is of the view that the applicants could not have been responsible for the possible loss or destruction of the missing document. Therefore, this deficiency is attributable to the authorities, not the first applicant.

35. On the second place, the domestic courts found that the first applicant's title was null and void because the sale of the apartment had not been approved by the Minister of Finance, as required by law, but by one of his deputies (see paragraph 10 above). In numerous similar cases, the Court has held that such deficiencies were clearly attributable to the authorities, not the individuals concerned (see, in *Velikovi and Others*, cited above, the cases of *Bogdanovi* and *Nikolovi*, §§ 218 and 229 of the judgment, and also *Peshevi v. Bulgaria*, no. 29722/04, § 20, 2 July 2009); it does not see a reason to reach a different conclusion in the case at hand.

36. The Court considers therefore that the present case is similar to those of *Bogdanovi*, *Tzilevi* and *Nikolovi*, examined in *Velikovi and Others* (see §§ 220, 224 and 231 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. In the assessment whether adequate compensation was available to applicants, the Court must have regard to the particular circumstances of each case, including the amounts received and losses incurred and, as the case may be, the availability of compensation and the practical realities in which the applicants found themselves.

37. The Court notes that soon after vacating his apartment the first applicant was provided with the tenancy of a municipally-owned dwelling (see paragraph 12 above). However, it considers that this alone cannot absolve the State from the obligation to provide adequate compensation.

38. The question thus arises whether adequate compensation was provided to the first applicant.

39. The first applicant took all necessary steps under the bond compensation scheme as it operated at the time but only obtained the equivalent of EUR 3,780, less than 23% of the value of his half of the apartment as of 2000 when it was accessed by a certified expert (see paragraphs 13 and 15 above). Furthermore, between 2000, when this

assessment was made (see paragraph 13 above), and 2004, when the first applicant obtained the above sum, real estate prices rose considerably.

40. As in the case of *Bogdanovi*, examined in *Velikovi and Others* (see § 222 of the judgment, cited above), the Court is of the view that there were no circumstances justifying this inadequate compensation.

41. It follows that the authorities failed to strike a fair balance between the first applicant's rights and the public interest and that there was a violation of Article 1 of Protocol No. 1.

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 the value of the apartment they had lost. They presented a valuation report prepared by an expert commissioned by them, assessing the value of the apartment at EUR 162,000. In respect of non-pecuniary damage suffered by the first applicant, his heirs claimed EUR 8,000.

44. The Government considered these claims to be excessive. They pointed out that the first applicant had received compensation bonds and had been accommodated in a municipally-owned apartment.

45. The Court notes at the outset that it only found a violation of Article 1 of Protocol No. 1 in the present case in respect of the first applicant (see paragraph 41 above); it can therefore examine the claims above in so far as they concern damage suffered by that applicant.

46. 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 first applicant 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 fact that the first applicant received EUR 3,780 from the sale of his compensation bonds (see paragraph 15 above). Having regard to the above, to all the circumstances of the case and to information at its disposal about real property prices in Sofia, the Court awards the first applicant EUR 37,000 in respect of pecuniary and non-pecuniary damage. That amount is to be paid

to his heirs, Mrs Bona Petrova Georgieva (the second applicant) and Mrs Emilia Belyuva Georgieva.

B. Costs and expenses

47. The applicants claimed EUR 4,240 for fifty-three hours of legal work by their lawyer, Mrs S. Margaritova-Vuchkova, at an hourly rate of EUR 80. 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 to Mrs Margaritova-Vuchkova.

48. They claimed another BGN 450, the equivalent of EUR 230, already paid by the applicants for legal work by Mrs Margaritova-Vuchkova, and BGN 626.3, the equivalent of EUR 321, for postage and translation for the proceedings before the Court and for the cost of the valuation report they submitted. In support of these claims they presented the relevant receipts.

49. The Government considered these claims to be excessive.

50. 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.

51. In the present case, the Court reiterates that it found a violation of Article 1 of Protocol No. 1 only in respect of the first applicant. Furthermore, it considers that the number of hours of work claimed by Mrs Margaritova-Vuchkova appears excessive. Therefore, having regard to the above and to the fact that she has already received BGN 450 from the applicants, the Court considers it reasonable to award EUR 1,500 in respect of Mrs Margaritova-Vuchkova's legal fees, to be transferred directly into her bank account.

52. As to the remaining costs and expenses, totalling EUR 551 (see paragraph 48 above) the Court, considering that it only found a violation of Article 1 of Protocol No. 1 in respect of the first applicant and that the expenses at issue must have been incurred by the two applicants, awards a half of the amount sought, that is EUR 276, to be paid jointly to the first applicant's heirs, Mrs Bona Petrova Georgieva (the second applicant) and Mrs Emilia Belyuva Georgieva.

C. Default interest

53. 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 complaints of the first applicant admissible and the complaints of the second applicant inadmissible;

2. *Holds* that in respect of the first applicant 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 to the first applicant's heirs, Mrs Bona Petrova Georgieva and Mrs Emilia Belyuva Georgieva, within three months of 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 37,000 (thirty-seven thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 1,776 (one thousand seven hundred seventy-six euros), plus any tax that may be chargeable to Mrs Bona Petrova Georgieva and Mrs Emilia Belyuva Georgieva, in respect of costs and expenses, EUR 1,500 (one thousand five hundred) of which to be transferred directly into the bank account of the applicants' legal representative, Mrs Margaritova-Vuchkova;
   (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 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