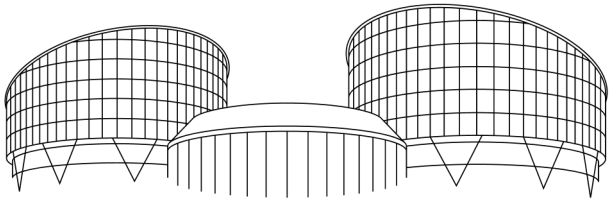

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF GYULEVA AND OTHERS v. BULGARIA

(Application no. 76963/01)

JUDGMENT

STRASBOURG

25 June 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 Gyuleva and Others 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 2 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 76963/01) against the Republic of Bulgaria lodged on 28 November 2000 with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by three Bulgarian nationals, Mrs Elena Gyuleva (the first applicant), who was born in 1921 and passed away on 19 May 2008, Mrs Valentina Gyuleva (the second applicant, born in 1947) and Mr Ivan Gyulev (the third applicant, born in 1950). The heirs of Mrs Elena Gyuleva are the second and third applicants, who stated that they wished to continue the proceedings in her stead.

2. The applicants were represented by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Dimova, of the Ministry of Justice.

3. On 30 June 2004 Mrs Anna Kukova (born in 1973) joined the proceedings as the fourth applicant.

4. On 25 September 2007 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints that the applicants had been the victims of an unlawful and arbitrary deprivation of property and that the proceedings under the Restitution Law had been excessively lengthy. It 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 (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

6. The first applicant was the mother of the second and third applicants. The fourth applicant is the second applicant's daughter.

7. In 1968 the first applicant and her husband purchased from the State a three-room apartment which occupied the first floor of a two-storey building in Plovdiv. Its area was approximately 95 square metres. They also acquired a share in the plot on which the building was constructed and a share in the yard.

8. The whole property had become State owned by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and for several years afterwards.

9. In the years after 1968 the first applicant and her husband made improvements to the property and constructed an annex of 34 square metres and a garage in the yard.

10. On 29 September 1992, shortly after the adoption of the Restitution Law, the former pre-nationalisation owners brought proceedings under section 7 of that law against the first applicant and her husband.

11. Following the death of the first applicant's husband, on an unspecified date the second and third applicants became co-owners of the property. The proceedings continued against the first, second and third applicants.

12. The District Court held nine hearings and examined witnesses and documentary evidence. Two adjournments, which caused a delay of approximately five months, were requested by the plaintiffs, the pre-nationalisation owners.

13. On 30 January 1995 the Plovdiv District Court found that the 1968 transaction was valid and rejected the claim.

14. On appeal, on 14 July 1995 the Plovdiv Regional Court upheld the lower court's judgment. The courts examined and rejected the plaintiff's allegation that the apartment had been acquired through abuse of official position.

15. On 20 May 1996 the Chief Public Prosecutor submitted to the Supreme Court a request for review.

16. On 22 July 1997 the Supreme Court of Cassation, to which the case was transferred following a reform in the judicial system, accepted the request and, considering that the lower courts had not examined all arguments of the plaintiffs, quashed their judgments and referred the case for a fresh examination.

17. In the renewed proceedings, on 21 July 1998 the Plovdiv District Court again rejected the plaintiffs' claim against the first, second and third applicants. The plaintiffs appealed.

18. On 12 July 1999 the Plovdiv Regional Court quashed the lower court's judgment, declared the 1968 contract null and void and restored the plaintiffs' ownership of the first floor and the share in the plot and the yard. By final judgment of the Supreme Court of Cassation of 21 June 2000 that decision was upheld. The courts found that a relevant document had been signed by the Deputy Minister of Architecture and Building Planning instead of by the Minister personally and concluded that as a result the first applicant and her husband had not validly acquired the property in 1968.

19. The applicants, including the fourth applicant who apparently lived in the apartment at issue for an unspecified period, refused to leave the property.

20. In 2002 Mr and Mrs P., the persons to whom the restored owners had sold the property in February 2002, brought a *rei vindicatio* action against the four applicants. The statement of claim did not mention the garage.

21. In May 2002 Mr and Ms P. demolished the garage and built a new one. The applicants complained to the prosecuting authorities, who considered that the dispute was of a civil nature and had to be decided in court.

22. On 24 October 2002 the Plovdiv District Court delivered its judgment. It ordered the applicants to vacate the property.

23. As regards the annex, the court noted the absence of authorisation for its construction but decided that the *rei vindicatio* claim was futile as the applicants no longer possessed the annex, Mr and Mrs P having occupied it. The court rejected the claim on that ground.

24. As regards the garage, the court made remarks to the effect that it must be considered State owned, but did not rule on the issue, as Mr and Mrs P. had not claimed the garage.

25. Ensuing appeals by the applicants were unsuccessful. It appears that they vacated the first-floor apartment in January 2003. The proceedings ended with a final decision on 9 February 2004.

26. In 2000 it became possible for the first, second and third applicants to obtain partial compensation from the State, in the form of bonds which could be used in privatisation tenders or sold to brokers. The applicants did not make use of this opportunity within the relevant two-month time-limit, which expired in August 2000. In August 2006 they requested compensation bonds, arguing that a legislative amendment adopted in 2006 should be interpreted as renewing the time-limit. The regional governor refused. Ensuing appeals submitted by the first, second and third applicants were rejected by a final judgment of the Supreme Court of Cassation of 23 October 2008. The courts considered that the legislative amendment at

issue did not give rise to a new entitlement to compensation bonds and therefore did not affect the relevant time-limit.

27. In 2005 Mr and Mrs P. brought an action against the second applicant, seeking compensation for the fact that she had failed to vacate the property in 2002. These proceedings ended on 10 July 2006. The second applicant was ordered to pay approximately 4,600 Bulgarian levs (BGN) in compensation (the equivalent of approximately 2,350 euros (EUR)).

II. RELEVANT DOMESTIC LAW AND PRACTICE

28. The remaining 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.

THE LAW

I. PRELIMINARY ISSUE

29. The Court notes at the outset that the first applicant died after lodging the present application and that her children, the second and the third applicants, have expressed their wish to continue the proceedings before the Court (see paragraphs 1 and 6 above). It has not been disputed that the first applicant's children are entitled to pursue the application on her behalf and the Court sees no reason to hold otherwise (see *Kozimor v. Poland*, no. 10816/02, §§ 25-29, 12 April 2007 and *Lukanov v. Bulgaria*, judgment of 20 March 1997, *Reports* 1997-II, § 35). For reasons of convenience, the text of this judgment will continue to refer to Mrs Elena Gyuleva as “the first applicant”.

II. THE COMPLAINTS OF THE FOURTH APPLICANT

30. The Court observes that in their written observations in reply to the Government's submissions, the applicants conceded that the fourth applicant had never had any proprietary interest in the apartment at issue and had not been a party to the 1992-2000 proceedings under the Restitution Law (see paragraphs 10-18 above). They also clarified that her complaints concerned in essence the 2002-2004 *rei vindicatio* proceedings (see paragraphs 19-25 above). The Government did not comment.

31. The Court notes that in so far as the complaints of all applicants, including the fourth applicant, related to the 2002-2004 proceedings, they were declared inadmissible by the Court in its partial decision of 25 September 2007.

32. In so far as the fourth applicant may be understood as claiming that she was the victim of violations of her rights under the Convention in relation to the proceedings under the Restitution Law (the 1992-2000 proceedings), the ensuing alleged deprivation of property and the hardship suffered by all applicants, the Court, in the light of all the material in its possession, and in so far as these complaints are within its competence, finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that the remaining complaints of the fourth applicant are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. THE COMPLAINTS OF THE FIRST, SECOND AND THIRD APPLICANTS

A. Alleged violation of Article 1 of Protocol No. 1

33. The first, second and third applicants complained that they had been deprived of their property arbitrarily, through no fault of their own and without adequate compensation. As the Court stated in its partial decision of 25 September 2007, these complaints fall to be examined 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."

34. The Government contested that argument.

1. Admissibility

35. The Court notes that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

2. Merits

36. The first, the second and the third applicants stated, *inter alia*, that their case was very similar to the cases of *Bogdanovi* and *Tzilevi*, examined by the Court in its *Velikovi and Others* judgment (cited above). They also stressed that they had suffered an excessive burden on account of the fact that the second applicant had been ordered to pay damages to the new owners (see paragraph 27 above).

37. The Government underlined the importance of the legitimate aims pursued by the Restitution Law.

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

39. The matters complained of constituted an interference with the property rights of the first three applicants and fall to be examined under the second sentence of the first paragraph of Article 1 of Protocol No. 1 as a deprivation of property.

40. Applying the criteria set out in *Velikovi and Others* (cited above, §§ 183-192), the Court notes that the title of the first, second and third applicants was declared null and void and they were deprived of their property on the sole ground that a relevant document had been signed in 1968 by the deputy to the official in whom the relevant power had been vested. The State administration, not the applicants, had been responsible for that omission.

41. 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 could not be achieved without adequate compensation.

42. The question arises whether adequate compensation was available to the first, second and third applicants.

43. Their attempt to obtain compensation bonds in 2006 was unsuccessful (see paragraph 26 above). It is true that in 2000 they could have applied for compensation bonds. They did not do so, as in one of the applications examined in *Velikovi and Others* (see §§ 226-228) – the case of *Tzilevi*. The Court considers that as a result the applicants forewent the opportunity to obtain between 15% and 25% of the amount which in accordance with relevant regulations represented the value of the property at the time, 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 cannot lead to the conclusion that the authorities would have secured adequate compensation. Indeed, 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 (*Velikovi and Others*, cited above, §§ 191 and 226). As the Court ruled in *Velikovi and Others*, the applicants' failure to use the bond compensation scheme must be taken into consideration under Article 41, but cannot affect decisively the outcome of their Article 1 Protocol 1 complaint.

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

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

B. Alleged violation of Article 6 § 1 of the Convention

46. The first, the second and the third applicants complained of a violation of Article 6 § 1 of the Convention in relation to the length of the proceedings under the Restitution Law. The Government contested that allegation.

47. Article 6 § 1 provides, in so far as relevant

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

1. Admissibility

48. The Court notes that the above complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

49. The period to be taken into consideration began on 29 September 1992 and ended on 21 June 2000. It thus lasted seven years and almost nine months for three levels of jurisdiction.

50. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

51. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see

Frydlender, cited above and *Maslenkovi v. Bulgaria*, no. 50954/99, § 44, 8 November 2007).

52. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. In reaching this conclusion, the Court takes into account the overall length of the proceedings, the delays imputable to the authorities and the fact that the relative factual complexity of the case could not explain the length of the proceedings (see paragraphs 10-18 above). In particular, the intervention of the Chief Public Prosecutor in the proceedings extended their length significantly (see paragraphs 14-18 above). Also, the Court considers that the applicants were not responsible for any significant delay.

53. There has accordingly been a breach of Article 6 § 1.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. In respect of pecuniary damage, the applicants claimed EUR 173,228 for the value of the property at issue (EUR 151,200 in the applicants' view) plus EUR 22,028 which the applicants would allegedly have earned if they had rented out the apartment between 1 February 2002 and 30 May 2008. The applicants submitted a valuation report by an expert hired by them and other documents.

56. In respect of non-pecuniary damage, the applicants claimed EUR 30,000 for anguish and distress suffered by them as a result of violations of their Convention rights.

57. The Government did not comment.

58. The Court, applying the approach defined in its judgment in the case of *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, 24 April 2008, considers that it is appropriate to award a lump sum to the applicants in respect of pecuniary and non-pecuniary damage.

59. In determining the amount, the Court takes into account the evidence submitted by the parties and information at its disposal about the relevant property market. It also takes into consideration the applicants' failure to use the bond compensation scheme, which could have secured to them, in 2000

or 2001, partial compensation in the amount of 15 to 25% of the amount which in accordance with the applicable regulations represented the value of the property at that time. As the Court found in *Todorova and Others* (cited above, §§ 43-46), the applicants' failure to use the bond compensation scheme must lead to a reduction, albeit modest, of the just satisfaction award.

60. On the basis of the above information and considerations and, in addition, taking into account the distress suffered by the applicants on account of the excessive length of the 1992-2000 proceedings, the Court awards the applicants jointly EUR 79,000 in respect of all damage. This amount must be paid to the second and third applicants, who were themselves victims of the violations found and are the heirs of the first applicant.

B. Costs and expenses

61. The applicants also claimed EUR 3,476.80 in respect of 49 hours and 40 minutes of legal work on the case by their representative at the hourly rate of EUR 70. They also claimed EUR 103 for translation, EUR 92 for the cost of a valuation report, EUR 39 for postal expenses and EUR 20 for copying and printing. The applicants submitted copies of a legal fees agreement between them and their legal representative, a time sheet, invoices and receipts. They requested that the sums awarded in respect of costs and expenses be paid directly into the bank account of their legal representative.

62. The Government did not comment.

63. 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, the Court considers that the number of hours of legal work claimed by the applicants is excessive, in particular in view of the fact that their legal representative was involved in a number of other cases which concerned the same legal issues as those in the present case (see *Velikovi and Others*, cited above). The Court finds it reasonable therefore to award EUR 2,500 in respect of legal fees. The claim in respect of other costs and expenses must be awarded in full. The total sum to be awarded for costs and expenses is thus EUR 2,754.

C. Default interest

64. 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* inadmissible the complaints of the fourth applicant;

2. *Declares* admissible the complaints of the first, the second and the third applicants that they were the victims of an unjustified deprivation of property and that the proceedings under the Restitution Law in their case were excessively lengthy;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

5. *Holds*
(a) that the respondent State is to pay to the second and the third applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 79,000 (seventy nine thousand euros), plus any tax that may be chargeable, in respect of damage and EUR 2,754 (two thousand seven hundred and fifty four euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, both amounts to be converted into Bulgarian levs at the rate applicable at the date of settlement;
(b) that the sum awarded in respect of costs and expenses, namely EUR 2,754, be paid directly into the bank account of the applicants' representative;
(c) 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;

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

Done in English, and notified in writing on 25 June 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President