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

FIFTH SECTION

CASE OF KOPRINAROVI v. BULGARIA

(Application no. 57176/00)

JUDGMENT

STRASBOURG

15 January 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 Koprinarovi 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 8 December 2008,

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

PROCEDURE

1. The case originated in an application (no. 57176/00) 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, Mrs Evgenia Petrova Koprinarova and her daughter Mrs Zinaida Krasteva Koprinarova ("the applicants"), on 15 November 1999.

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

3. The applicants alleged, in particular, that they have been deprived of their property in violation of Article 1 of Protocol No. 1.

4. On 18 September 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the alleged deprivation of property to the Government. 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 born in 1920. She died on 30 April 2006. The second applicant, her daughter and only heir, expressed her wish to pursue the proceedings in her own name and in the name of her deceased mother. The second applicant was born in 1945 and lives in Sofia.

7. In 1958, Mr Koprinarov, whose heirs the applicants are, purchased from the State one storey of a three-storey house in Plovdiv. The property's surface area was 109 square metres. The property had belonged to a private person until the nationalisations carried out by the communist regime in Bulgaria in 1947 and for several years afterwards.

8. After the adoption of the Restitution Law (ЗВСОНИ) in 1992, the former pre-nationalisation owners brought proceedings under section 7 of that law against the applicants, seeking the nullification of the applicants' title and the restoration of their property.

9. The case went twice through the court system and the Supreme Court of Cassation gave final judgment on 26 July 1999.

10. The courts examined and dismissed a number of allegations made by the plaintiffs in respect of alleged breaches of the housing regulations and other legal provisions as in force in 1958. The courts found, however, that a relevant document in the file concerning the 1958 transaction – approval by the Minister of Public Construction – had been signed by a Head of Department in the Ministry, not by the Minister personally. It followed that the person from whom the applicants had inherited had obtained the property unlawfully. The applicants' title was therefore null and void and they were ordered to vacate the property.

11. The applicants were evicted from the property on 17 September 2001. The eviction was conducted in the presence of special counsel for the applicants, appointed by the relevant court on the basis that the applicants had not been found at their address and the summonses sent had been repeatedly returned undelivered. The applicants appealed against the acts of the enforcement judge arguing, *inter alia*, that they had never changed their address and that their belongings had been damaged. The appeals were unsuccessful. The courts noted that the applicants had not been found at the address they had indicated and that therefore there had not been procedural violations. Also, the applicants had failed to collect their belongings for more than a month and had thus been responsible for the damage complained of.

12. Following their eviction, the applicants wrote repeatedly to the municipal authorities asking for compensation in the form of a municipal apartment or land but did not receive a reply.

13. On an unspecified date in 1999 the applicants brought an action against the Plovdiv Municipality and the Ministry of Public Construction and Regional Development seeking compensation for the fact that they had lost their property owing to an administrative error committed by the defendant bodies in 1958. They claimed the current value of the apartment, estimated at 54,000 Bulgarian levs (BGN) (27,000 euros (EUR)). The claim was rejected by final judgment of the Supreme Court of Cassation of 27 June 2006 on the grounds that the relevant legislation – the State Responsibility for Damage Act 1989 – did not apply retrospectively and that the law provided for a special compensation scheme by bonds in cases like that of the applicants.

14. In 2000, 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.

15. The applicants applied for compensation by bonds only in July 2006, when their claim for damage was rejected. On 16 August 2007 the regional governor declared their request inadmissible for having been submitted outside the three-month time-limit of the adoption of that provision in January 2000. The governor pointed that recent amendments of the restitution law (see paragraph 18 below) had not provided for a new time-limit.

16. Since an unspecified date the applicants have lived in Sofia, in service accommodation provided by the second applicant's husband's office.

II. RELEVANT 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

I. PRELIMINARY OBSERVATION

19. The Court notes at the outset that the first applicant died in 2006 and that the second applicant, her daughter, expressed the wish to pursue the application also on her behalf. In similar cases in which an applicant has died in the course of the proceedings the Court has taken into account the statements of the applicant's heirs who have expressed a wish to pursue the proceedings before it and the Court sees no reason to hold otherwise in the present case (see, among others, *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 85, 9 June 2005).

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

20. The applicants complained that they had been deprived of their property in violation of Article 1 of Protocol No. 1 to the Convention, 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."

21. The government disagreed.

A. Admissibility

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

B. Merits

23. The applicants stated that they had bought their apartment in good faith and had not been responsible for the administrative omission that led to the nullification of their title forty years later. They maintained that no adequate compensation had been available to them for the deprivation of

their property. They stressed that the compensation bonds available to them in 2000 were traded at 10% of their value at that time and that the possibility of obtaining such bonds was no longer open to them after the law was amended in 2006. They also submitted that, contrary to what had been suggested by the Government, they had not been entitled to rent a municipal apartment, such apartments being available only for persons in need of housing due to social or health problems.

24. The Government stated that the restitution laws adopted after the fall of communism aimed at restoring justice. In the applicants' case, the courts had applied the relevant law correctly. The requisite fair balance had not been upset because the applicants had been entitled to the tenancy of a municipal apartment and to compensation by bonds which, following the 2006 amendment of the law, could have been paid at face value. The applicants had failed to introduce a timely request to obtain such compensation.

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

26. The facts complained of undoubtedly constituted an interference with the applicants' property rights 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.

27. The Court must examine, therefore, whether the deprivation of property at issue was lawful, was in the public interest and struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

28. The Court notes that 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), it 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 was declared null and void and they were deprived of their property on the sole ground that in 1958 the administration had failed to comply with an administrative formality – a relevant document had been signed by a head of department instead of the relevant Minister. The error was clearly imputable to the State, not to the applicants or the person from whom they had inherited. Moreover, it was not alleged that in 1958 Mr Koprinarov had had any opportunity to interfere with the administrative formalities.

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 Court notes that the applicants have not received compensation. However, as in one of the applications examined in *Velikovi and Others* (see §§ 226-228) – the application of *Tzilevi* – the applicants did not apply for compensation bonds, as they could have in 2000. The Court considers that, as a result, they forewent the opportunity to obtain at least between 15% and 25% 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 in 2006 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. 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).

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 bonds compensation scheme will have to be taken in consideration under Article 41, but cannot affect decisively the outcome of their Article 1 Protocol 1 complaint.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The second applicant claimed 250,000 Bulgarian levs (BGN), approximately 127,000 euros (EUR), in respect of the market value of the apartment. She submitted a valuation report, dated April 2008, by an expert commissioned by her. She also claimed BGN 20,000 (EUR 10,000) for the non-pecuniary damage sustained by her and her mother.

36. The Government did not comment.

37. Applying the approach set out in similar cases, in view of the nature of the violation found the Court finds appropriate to fix a lump sum in respect of pecuniary and non-pecuniary damage with reference to the value

of the apartment 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).

38. To determine the amount to be awarded, the Court observes that it stated above that the applicants' failure to use the bonds compensation scheme would have to be taken into consideration under Article 41 of the Convention. It notes that had the applicants made use of that scheme, they could have obtained between 15% and 25% of the value of the apartment. 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 the possibility to obtain partial compensation. It accepts that the reduction must be modest, having regard to the fact that the relevant national legislation on compensation was subject to frequent amendments in contradictory directions and was thus unpredictable and generated legal uncertainty (see paragraph 31 above and *Todorova and others*, cited above, § 46).

39. The Court further notes that in 1999 the market value of the apartment was assessed at EUR 27,000 by the applicants (see paragraph 13 above) and that in April 2008 an expert commissioned by them estimated it at EUR 127,000. The Court also notes that whereas the applicants were not provided with municipal housing, there is no indication that they risked being homeless and it appears from the documents submitted that they have lived in service accommodation provided by the second applicant's husband's employer.

40. Having regard to the above considerations, all the circumstances of the case and information at its disposal about the real-estate market in Plovdiv, the Court awards the second applicant, who is pursuing the application in her own name and as the first applicant's heir, EUR 72,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

41. The applicants claimed BGN 12,000 (EUR 6,130) for legal fees incurred in the procedure before the Court. They submitted an agreement between them and their lawyer according to which the fees would be paid only in case of success.

42. The Government did not comment.

43. 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 the above criteria, the Court considers it reasonable to award the sum of EUR 2,500 for costs and expenses.

C. Default interest

44. 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 remainder of 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 Mrs Zinaida Koprinarova, 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 72,000 (seventy-two thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
   ii. EUR 2,500 (two thousand and five hundred euros), plus any tax that may be chargeable to the applicant, 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' claim for just satisfaction.

Done in English, and notified in writing on 15 January 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President