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

FIFTH SECTION

CASE OF LAZAROV v. BULGARIA

(Application no. 21352/02)

JUDGMENT

STRASBOURG

22 May 2008

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 Lazarov v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Volodymyr Butkevych,
Rait Maruste,
Renate Jaeger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 29 April 2008,

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

PROCEDURE

1. The case originated in an application (no. 21352/02) 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 a Bulgarian national, Mr Petar Ivanov Lazarov ("the applicant"), on 18 May 2002.

2. The applicant was represented by Ms Z. Kalaydjieva, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotzeva, of the Ministry of Justice.

3. On 22 March 2006 the Court decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1950 and lives in Sofia.

5. The applicant's late father owned a house, a garage and an outhouse with some adjoining land in Sofia. By a mayor's order of 28 March 1989 the above property was expropriated for the construction of a school. The expropriated property was valued at 16,878.20 old Bulgarian levs (BGL). The order, based on section 98(1) of the 1973 Territorial and Urban Planning Act ("the TUPA" – "*Закон за териториалното и селищно*

устройство") provided that the applicant was to be compensated with a flat and his father was to be compensated with another flat and a garage. Both flats were to be situated in a building which the municipality intended to construct.

6. By a supplementary order of 15 June 1990, based on section 100 of the TUPA, the mayor indicated the exact flats and the garage with which the applicant and his father were to be compensated, specifying the building in which they would be located and, in the case of the flats, also their precise surface area.

7. On an unspecified date the municipal authorities opened blocked housing savings accounts with the State Savings Bank in the name of the applicant and his father. An amount equivalent to the estimated value of the expropriated real estate (BGL 16,878.20) was deposited in the housing savings account of the applicant's father. The latter transferred BGL 8,878 into the applicant's housing savings account. As the value of the flats and garage offered in compensation was higher than that of the expropriated property, the applicant and his father had to make top-up payments on unspecified dates in the amount of BGL 92,000. The nominal sum was increased considerably owing to the high inflation rate during the relevant period.

8. In 1991 the municipal authorities took possession of the expropriated property and the buildings were pulled down. However, the construction of the school never started.

9. While awaiting the construction of the flats the applicant, his family and parents were settled in a municipal council flat. The flat was much smaller than the total surface area of the flats offered in compensation and was situated in a building owned by the municipality which was in a poor state of repair.

10. The applicant's father died in 1992. In December 1999 his mother died, whereupon he became the sole owner of all the "future" real property allocated in compensation for the 1989 expropriation.

11. The construction of the building in which the flats and the garage were to be located did not start as planned.

12. The applicant made numerous complaints to the municipal authorities, to no avail. By a letter of 5 July 1999 the municipal company Sofinvest EOOD informed the applicant that the construction had not yet started and that no funding was available.

13. Meanwhile, on 20 March 1995, the applicant requested the mayor to rescind the expropriation order in accordance with section 102 of the 1951 Property Act. On 9 November 1995 the mayor refused on the ground that the house had been demolished and the expropriated plot had been cleared for groundwork. According to the relevant legislation in force, the expropriation order could only be rescinded if the land had not been cleared for groundwork. The applicant lodged an appeal with the Sofia City Court.

In a judgment of 10 June 1998 the Sofia City Court upheld the mayor's refusal for the same reason.

14. On 10 November 1998 the applicant filed a request with the local governor seeking restitution of the expropriated plot under the provisions of the 1997 Compensation for Expropriated Property Act. On 20 January 1999 the local governor refused on the ground that the expropriated property did not fall within the ambit of that Act.

15. On 6 April 2001 the applicant filed another request with the municipality seeking to recover the expropriated plot. On 3 July 2001 the deputy mayor advised the applicant to renounce his claims to compensation for the demolished house in a notarised declaration. Although the applicant submitted the requested declaration, on 20 March 2002 the mayor refused to rescind the expropriation order because the house had been demolished and the plot cleared and occupied by the municipality. The applicant did not lodge an appeal with the courts against this refusal.

16. On an unspecified date the municipal authorities sold the real property expropriated from the applicant's family to a private third party who planned to build a block of flats on it.

17. On a further request from the applicant the mayor of the municipality, in orders of 23 May and 8 June 2006, allocated two flats to him, equivalent to those originally due, in buildings under construction. As the municipality did not have any garages available, the orders did not concern the garage which the applicant was entitled to receive.

18. On 3 April 2007 two flats apparently equivalent to those originally due were delivered to the applicant. As of March 2008 the garage remained undelivered.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. Section 104(1)(c) of the Property Act as in force between 1990 and 1996 provided that in the case of compensation with a "future" flat a blocked account was to be opened in the name of the owner with the State Savings Bank. An amount corresponding to the estimated value of the expropriated flat was to be deposited in that account. Section 102(1) provided that the valuation was to be made on the basis of the market price at the time of expropriation.

20. Where the estimated value of the property offered in compensation was higher than that of the expropriated property, the expropriated owner had to pay the difference (section 259 of the rules on application of the TUPA).

21. The remaining relevant domestic law and practice is summarised in *Kirilova and Others v. Bulgaria* (nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 72-9, 9 June 2005).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

22. The applicant complained under Article 1 of Protocol No. 1 that for many years the authorities had failed to deliver the real property to which he was entitled as compensation for his expropriated property and had eventually delivered only part of the property to which he had a vested right.

23. Article 1 of Protocol No. 1 provides:

> "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."

24. The Government did not contest the applicant's arguments but merely drew attention to the fact that the authorities had eventually offered the applicant two flats equivalent to those originally due.

A. Admissibility

25. 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

26. The Court notes at the outset that the present case is very similar to *Kirilova and Others* (cited above), in which it found a violation of Article 1 of Protocol No. 1.

27. In the instant case, as in *Kirilova and Others*, the applicant had a vested right to the flats and the garage offered by the authorities as compensation for the expropriation of his father's property, and was the victim of interference with his right to peaceful enjoyment of his possessions consisting in the authorities' continued failure to deliver, over an excessively long period, the real property awarded to him (see paragraphs 5-18 above).

28. Since the case does not concern – and the Court has no jurisdiction *ratione temporis* to examine – the issues linked to the taking of the

applicant's father's property in 1989 or the adequacy of the compensation awarded at that time, the interference cannot be equated to a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. The situation thus comes within the first sentence of that paragraph, which lays down in general terms the principle of peaceful enjoyment of property (see *Kirilova and Others v. Bulgaria*, cited above, §§ 104 and 105).

29. In order to ascertain whether a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights, the Court must examine whether by reason of the State's inaction the applicant had to bear a disproportionate and excessive burden (see *Broniowski v. Poland* [GC], no. 31443/96, § 150, ECHR 2004-V, and *Kirilova and Others v. Bulgaria*, cited above, § 106).

30. With regard to the delay in providing the applicant with compensation, the Court notes that while the authorities may have experienced difficulties in constructing the flats in issue owing to a strained financial situation, a lack of funds cannot justify lengthy delays such as those in the present case (see *Kirilova and Others*, cited above, § 122). The applicant remained without the compensation to which he was entitled under domestic law for a period of more than seventeen years, a period which is clearly excessive and unjustified. Moreover, he was faced with the passive attitude of the authorities which, despite their obligation to act in good time and in a consistent and appropriate manner and the numerous complaints made by the applicant, failed to find a solution to the problem. The applicant was thus left in a position of uncertainty as to whether or when he would receive compensation (see paragraphs 5-18 above).

31. In particular, the applicant's request that the expropriation order be rescinded was refused (see paragraphs 13-15 above). Furthermore, – as in *Kirilova and Others* – as a result of a combination of legal and practical obstacles he could not obtain the compensation due to him through other means such as a fresh valuation, unblocking of the housing savings account or an action for damages against the State (see *Kirilova and Others*, cited above, §§ 110-20).

32. Having regard to the excessive delays, the authorities' passive attitude over a lengthy period and the situation of uncertainty in which the applicant was placed, the fact that in 2007 two flats apparently equivalent to those originally due were delivered to the applicant cannot be seen as restoring the fair balance required by Article 1 of Protocol No. 1. Furthermore, the garage to which the applicant is also entitled has still not been delivered (see paragraphs 17 and 18 above).

33. The Court finds that the above is sufficient to consider that the applicant had to bear a special and excessive burden which upset the fair

balance which has to be struck between the demands of the public interest and protection of the right to the peaceful enjoyment of possessions.

34. It follows that there has been a violation of Article 1 of Protocol No. 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

35. The applicant complained of a violation of Article 13 on account of the alleged lack of any machinery in Bulgarian law capable of remedying the situation in issue. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

36. Having regard to the considerations and conclusions set out above, the Court considers that it is not necessary to examine the issue separately under Article 13 (see *Kirilova and Others*, cited above, § 127).

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

1. Pecuniary damage

38. The applicant claimed the following amounts: (1) 7,000 euros (EUR) in respect of the value of the garage which was never delivered; (2) 230,460 United States dollars (USD) in respect of rent (USD 95,877) plus interest (USD 134,583) which he would allegedly have received had he let out the two flats and the garage during the period between March 1989 and December 2006, and (3) approximately USD 43,500 for losses allegedly resulting from the fact that the sums deposited in the applicant's and his father's housing savings accounts could not be used by them. The applicant submitted two expert reports.

39. The Government did not express an opinion on the applicant's claims for just satisfaction.

40. The Court finds it appropriate to adopt the same approach as in *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 23-33, 14 June 2007.

41. As regards the damage stemming from the authorities' continuing failure to deliver the garage, the Court considers that the best way to redress the effects of the breach of Article 1 of Protocol No. 1 is for the respondent State to deliver the garage to the applicant. If the respondent State does not make such delivery within three months from the date on which this judgment becomes final, it must pay the applicants a sum corresponding to the current value of the garage. Having regard to the valuation report submitted by the applicant and the information available to it about real estate prices in Bulgaria, the Court assesses this value at EUR 6,000.

42. As regards the alleged loss of earnings resulting from the fact that the money deposited in the applicant's housing savings account remained inoperative, the Court does not find a causal link between any such loss and the violation found in the present case. In particular, it is obvious that, had the municipality delivered on time the property due to the applicant, the amount in question would have been paid as early as 1991 or 1992 to cover the price of the flats.

43. In respect of the alleged loss of rent, the Court observes that the applicant has not shown that he or his family had alternative housing available to them and, consequently, that they would have let out the two flats and the garage. Furthermore, the applicant, who was provided with temporary municipal housing, did not claim that he or his family had incurred expenses in order to find accommodation while awaiting delivery of the two flats, or that they had rented a garage. The Court nevertheless considers that the applicant has suffered a certain loss of opportunity on account of not having been able to use and enjoy the flats and the garage for excessively long periods of time (see *Kirilova and Others v. Bulgaria* (just satisfaction), cited above, § 33). Ruling in equity, it awards EUR 8,000 under this head.

2. Non-pecuniary damage

44. With regard to non-pecuniary damage, the applicant submitted that he had suffered frustration and anxiety over the period of many years during which the authorities had failed to deliver the compensation due. He left it to the Court to determine the exact amount. The Government did not comment.

45. The Court considers that the breach of Article 1 of Protocol No. 1 caused the applicant non-pecuniary damage arising out of the frustration suffered as a result, firstly, of the prolonged failure of the authorities to deliver the property to which he was entitled and, secondly, of the authorities' inability and reluctance to solve his problem for such a long time. The applicant and his family were further distressed by the need to live in worse conditions, in the municipal housing where they were accommodated (see paragraph 9 above). The Court, ruling in equity, awards the applicant EUR 5,000 under this head.

B. Costs and expenses

46. The applicant claimed EUR 6,720 for costs and expenses, including EUR 6,170 in respect of legal fees, EUR 70 for translation costs, EUR 100 for other general office expenses and EUR 480 for two valuation reports. In support of his claim, the applicant presented a legal fees agreement, contracts with the valuation experts and a receipt for translation costs.

47. The Government did not comment.

48. The Court notes that the applicant's claim in respect of legal fees is supported by relevant documents but is not fully substantiated, as the number of hours of legal work claimed has not been stated. Also, the sum claimed in respect of the valuation reports appears excessive. Having regard to the above and taking into account the amount of EUR 850 received in legal aid from the Council of Europe, the Court awards EUR 2,000 in respect of all costs and expenses.

C. Default interest

49. 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 no separate issue arises under Article 13 of the Convention;

4. *Holds* that the respondent State is to deliver to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the ownership and possession of the garage he is entitled to;

5. *Holds*
   (a) that failing such delivery, the respondent State is to pay the applicant, within the same period of three months, EUR 6,000 (six thousand euros), to be converted into Bulgarian levs at the rate applicable at the date of settlement, in respect of pecuniary damage concerning the garage, plus any tax that may be chargeable;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

6. *Holds*

(a) that the respondent State is to pay the applicant, 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 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage concerning the apartments;

(ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage concerning all complaints;

(iii) EUR 2,000 (two thousand 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 22 May 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President