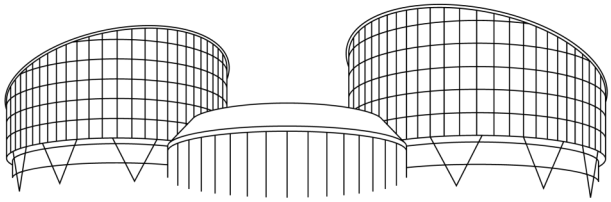

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF MADZHAROV v. BULGARIA

(Application no. 40149/05)

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 Madzharov 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,
Mirjana Lazarova Trajkovska,
Ganna Yudkivska, *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. 40149/05) 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 a Bulgarian national, Mr Dinko Kirilov Madzharov ("the applicant"), on 28 October 2005.

2. The applicant was represented by Ms S. Margaritova-Vuchkova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged that he had been deprived of his property in violation of Article 1 of Protocol No. 1 and Articles 6 § 1, 8 and 14 of the Convention.

4. On 5 May 2009 the President of the Fifth Section decided to communicate to the Government the complaint concerning the applicant's deprivation of property. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 of the Convention).

5. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 23 February 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 as in force at the time).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1966 and lives in Sofia.

7. In 1966 his grandparents bought from the Sofia municipality an apartment of 73 square metres 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 1946.

8. After the death of the applicant's grandparents his father inherited from them. In 1995 he conveyed the property to the applicant.

9. On 19 February 1993 the heirs of the former pre-nationalisation owner of the apartment brought an action against the applicant's father under section 7 of the Restitution Law, arguing that his title to the property was null and void and seeking the restoration of their own title. They also brought a *rei vindicatio* action.

10. In 2003 the applicant's father died and the applicant succeeded him in the proceedings.

11. The proceedings ended with a final judgment of the Supreme Court of Cassation of 27 May 2005. The courts allowed the plaintiffs' claims, finding that the contract whereby the applicant's grandparents had acquired the apartment had been null and void since the sale had not been approved by the Minister of Finance, as required by the relevant provisions applicable at the time, but by his deputy.

12. In July or August 2005 the applicant and his family vacated the apartment. In November 2005 they were granted the tenancy of a municipally-owned apartment at a regulated price, where they moved in.

13. The applicant could apply to receive compensation bonds within two months of the judgment of 27 May 2005. However, he only applied for bonds on 7 October 2005. On 26 March 2008 the regional governor dismissed the request as time-barred. On an appeal by the applicant, this decision was upheld by the courts.

II. RELEVANT BACKGROUND FACTS, DOMESTIC LAW AND PRACTICE

14. 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

15. The applicant complained that he had been deprived of his property arbitrarily, through no fault of his own and without adequate compensation. He relied on Article 1 of Protocol No. 1 and Articles 6 § 1, 8 and 14 of the Convention.

16. 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."

17. The Government argued that the applicant had failed to exhaust domestic remedies, as required under Article 35 § 1 of the Convention, because he had not sought compensation bonds within the applicable time-limits. In any event, they considered that a fair balance between the public interest and the applicant's rights had been achieved, because soon after vacating the disputed apartment the applicant and his family had been granted the tenancy of a municipally-owned flat. Therefore, they urged the Court to conclude that there was no violation of Article 1 of Protocol No. 1.

18. The applicant contested these arguments.

A. Admissibility

19. The Court notes the Government's objection for non-exhaustion of domestic remedies. In this respect, it refers to its detailed reasoning in *Velikovi and Others*, where it found that at the relevant time and until the amendments to the Restitution Law in 2006 the bonds compensation scheme did not secure adequate compensation with any degree of certainty (see *Velikovi and Others*, cited above, §§ 139 and 227). Furthermore, the Court has already examined an identical objection in similar cases and has rejected it (see *Dimitar and Anka Dimitrovi v. Bulgaria*, no. 56753/00, § 23, 12 February 2009, and *Bachvarovi v. Bulgaria*, no. 24186/04, § 19, 7 January 2010). It does not see a reason to reach a different conclusion in the present case and, accordingly, dismisses the Government's objection.

20. Furthermore, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, nor inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

21. The Court notes that the application concerns the same legislation and issues as in *Velikovi and Others*, cited above.

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

23. Applying the criteria set out in *Velikovi and Others* (cited above, §§ 183-192), the Court notes that the applicant's title was declared null and void and he was deprived of his property on the sole ground that a document relating to the purchase of the apartment by his grandparents in 1966 had not been signed by the Minister of Finance with whom the relevant power had been vested but by his deputy (see paragraph 11 above). This deficiency is attributable to authorities, not the applicant (see *Velikovi and Others*, cited above, §§ 218 and 223, and *Peshevi v. Bulgaria*, no. 29722/04, § 20, 2 July 2009).

24. The Court considers therefore that the present case is similar to those of *Bogdanovi* and *Tzilevi*, examined in *Velikovi and Others* (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. 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 (see also *Georgievi v. Bulgaria*, no. 10913/04, § 21, 7 January 2010).

25. The Court notes that soon after vacating the apartment the applicant and his family were 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 (see *Georgievi*, cited above, § 37).

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

27. The applicant failed to apply for compensation bonds within the relevant time-limit under domestic law (see paragraph 13 above). However, the Court already found that at the relevant time the bonds compensation scheme did not secure adequate compensation with any degree of certainty (see paragraph 19 above and the cases referred to there, and also *Koprinarovi v. Bulgaria*, no. 57176/00, § 31, 15 January 2009, and *Peshevi*, cited above, § 23). Therefore, as in *Velikovi and Others* (see § 227 of the judgment) and the subsequent similar cases (see, for example, *Peshevi*, cited

above, § 23), although it will fall to be taken in consideration under Article 41, the applicant's failure to use the bond compensation scheme cannot affect decisively the outcome of the Article 1 of Protocol No. 1 complaint.

28. In these circumstances the Court finds that no clear and foreseeable opportunity to obtain adequate compensation was available to the applicant.

29. It follows that the fair balance between the public interest and the need to protect his rights was not achieved. There has therefore been a violation of Article 1 of Protocol No. 1

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. In respect of pecuniary damage the applicant claimed the value of the apartment he had lost. He presented a valuation report prepared in October 2009 by an expert commissioned by him, assessing the value of the apartment at 117,000 euros (EUR). In respect of non-pecuniary damage, the applicant claimed EUR 7,000.

32. The Government contested the valuation report presented by the applicant and urged the court to dismiss his claim for pecuniary damage. In any event, they considered that the applicant's claims were excessive.

33. Applying the approach set out in similar cases (see, for example, *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, §§ 10 and 47, 24 April 2008, and *Peshevi*, cited above, § 32) 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 applicant and all other relevant circumstances. The Court will also take into account the applicant's failure to use the bond compensation scheme (see paragraph 27 above and *Todorova and Others*, cited above, §§ 44-46).

34. Having regard to the above, all the circumstances of the case and the information at its disposal about real property prices in Sofia, the Court awards the applicant EUR 59,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

35. The applicant claimed EUR 1,230 and 500 Bulgarian levs (BGN) (the equivalent of EUR 256), or EUR 1,486 in total, for the legal work performed by Ms S. Margaritova-Vuchkova and the lawyer who had represented him in the initial stages of the procedure before the Court. He requested that any sum awarded under this head, apart from BGN 800, the equivalent of EUR 410, already paid by him for legal fees, be transferred directly into Ms Margaritova-Vuchkova's bank account. In support of this claim he presented contracts for legal representation and a time sheet.

36. The applicant claimed also: 1) BGN 360.20, the equivalent of EUR 185, paid by him for translation and postage for the proceedings before the Court and for the valuation report he presented in support of his claim for pecuniary damage (see paragraph 31 above); 2) BGN 80, the equivalent of EUR 41, for the cost of another valuation report submitted with the applicant's initial application in 2005; and 3) BGN 10, the equivalent of EUR 5, paid in court fees in the proceedings whereby the applicant challenged the regional governor's refusal to provide him with compensation bonds (see paragraph 13 above). In support of these claims the applicant presented the relevant receipts.

37. The Government contested the claims.

38. 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.

39. In the present case, the Court considers that the costs for legal fees (paragraph 35 above) were actually and necessarily incurred and reasonable as to quantum. It thus awards the whole sum claimed, that is, EUR 1,486. Out of this amount, EUR 410 is to be paid to the applicant and the remainder (EUR 1,076) directly into the bank account of Ms Margaritova-Vuchkova.

40. In respect of the remaining claims (see paragraph 36 above), the Court, having regard to the information in its possession and the circumstances of the case, considers that only the expenses described under 1) were necessary. Furthermore, it considers that they were actually incurred and reasonable as to quantum. It thus awards the applicant EUR 185 under this head.

C. Default interest

41. 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 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 59,000 (fifty-nine thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 1,671 (one thousand six hundred seventy-one euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, EUR 1,076 (one thousand and seventy-six euros) of which to be transferred directly into the bank account of the applicant's 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 applicant's 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