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

FIFTH SECTION

CASE OF MIHAYLOVI v. BULGARIA

(Application no. 6189/03)

JUDGMENT

STRASBOURG

12 February 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 Mihaylovi 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 20 January 2009,

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

PROCEDURE

1. The case originated in an application (no. 6189/03) 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 Anton Mihaylov and his wife, Mrs Nadezhda Mihaylova ("the applicants"), on 14 February 2003.

2. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Dimova.

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

4. On 26 November 2007 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).

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, Mr Mihaylov, was born in 1926. He passed away in 2003. His heirs, the second applicant, Mrs Mihaylova, and her two children, Ms Valentina Mihaylova and Mr Stefan Mihaylov, stated that they wished to pursue the application. The applicants were born respectively in 1931, 1956 and 1962, and live in Sofia.

7. In 1985 the first two applicants purchased from the Sofia municipality a three-room apartment of 88 square metres. The apartment was located in a three-storey building in the centre of Sofia. It had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and for several years afterwards.

8. Several months after the adoption of the Restitution Law in 1992, the former pre-nationalisation owners brought proceedings under section 7 of that law against the first and second applicants, seeking the nullification of the applicants' title and the restoration of their property.

9. The proceedings ended by final judgment of the Supreme Court of Cassation of 13 December 2002. The courts found that the applicants' title was null and ordered them to vacate the apartment. This finding was based on two grounds: 1) the area where the apartment was located had been earmarked for construction of buildings of more than three storeys, according to the building plan of Sofia, and the relevant legislation prohibited the sale of apartments in three-storey buildings located in such areas; and 2) the 1985 sale contract had not been signed by the mayor but by his deputy.

10. The applicants vacated the apartment on 30 December 2002.

11. After the final judgment in their case, the applicants had the opportunity to obtain compensation from the State in the form of compensation bonds which could be used in privatisation tenders or sold to brokers. The applicants did not avail themselves of this opportunity.

12. In May 2006 the second applicant was granted the tenancy of a one-room municipal apartment.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. 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.

14. 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

PRELIMINARY OBSERVATION

15. The Court notes at the outset that the first applicant died in 2003 and that his heirs, the second applicant and their two children, expressed the wish to pursue the application on his 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).

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

16. The applicants complained that they have been deprived of their property in violation of 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."

17. The Government contested that argument.

A. Admissibility

18. The Court notes that the application 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

19. The applicants stated that they were deprived of their property and that the requisite fair balance under Article 1 of protocol No. 1 has not been respected. They maintained that no adequate compensation had been made available to them for the deprivation of their property. They stressed that the amendments providing for payment at face value of the compensation bonds had been adopted only in 2007, when the opportunity to obtain such bonds was no longer available to them.

20. The Government stated that the restitution laws adopted after the fall of communism were 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 compensation by bonds which following the 2007 amendments to the law could have been paid at face value. The applicants had failed to introduce a timely request to obtain such compensation. Moreover, the second applicant was granted the tenancy of a municipal apartment when she applied in 2006.

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

22. 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.

23. 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.

24. 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.

25. 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 because of shortcomings imputable to the municipal authorities. In particular, the fact that the

municipality sold an apartment in a three-storey building in an area where higher buildings had been planned was entirely a matter for the municipality to decide. Moreover, it was never claimed that the sale had impeded the realisation of the building plan, which was apparently abandoned. The second ground for nullity, the fact that the contract had been signed in 1985 by the deputy to the official in whom the relevant power had been vested was a procedural defect imputable to the municipal administration and not to the applicants.

26. 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.

27. 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 2003. 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 (see *Velikovi and Others*, cited above, § 191 and § 226).

28. In these circumstances, the Court finds that no clear and foreseeable opportunity to obtain compensation was secured to the applicants. Their failure to use the bond compensation scheme will have to be taken in consideration under Article 41, but cannot decisively affect the outcome of their Article 1 Protocol 1 complaint.

29. 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. The applicants claimed 70,000 euros (EUR) in respect of the market value of the apartment. However, they did not submit an expert report or any other document on which basis this estimate was made. They also claimed 1,307 Bulgarian levs (BGN), approximately EUR 670, in respect of the amount of rent paid after their eviction and submitted the relevant receipts. The applicants claimed EUR 4,000 for non-pecuniary damage.

32. The Government invited the Court to determine an award in conformity of its case-law in similar cases and pointed that the applicants did not submit evidence in support of their claim.

33. Applying the approach set out in similar cases, 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 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).

34. To determine the amount to be awarded, the Court observes that it stated above that the applicants' failure to use the bond 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 opportunity 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 27 above and *Todorova and others*, cited above, § 46).

35. Having regard to the above considerations, all the circumstances of the case and information at its disposal about the real-estate market in Sofia, the Court awards the applicants EUR 57,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

36. The applicants also claimed BGN 1,800 (EUR 920) for legal fees. They submitted a receipt for paid legal fees of BGN 540 (EUR 276) for the procedure before the Court and of BGN 110 (EUR 56) for the domestic procedure.

37. The Government did not comment.

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. In the present case, the Court notes that the applicants provided justification for part of the legal fees claimed and awards EUR 332 in respect of costs and expenses.

C. Default interest

39. 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;

3. *Holds*
   (a) that the respondent State is to pay the applicants, 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 57,000 (fifty seven thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      ii. EUR 332 (three hundred thirty two euros), plus any tax that may be chargeable to the applicants, 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 12 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President