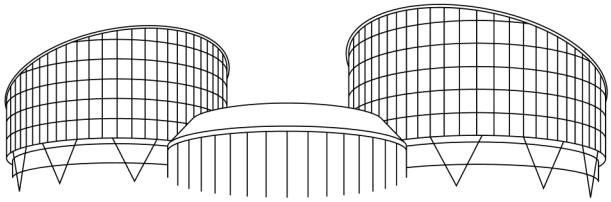

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF PANAYOTOVA v. BULGARIA

(Application no. 27636/04)

JUDGMENT

STRASBOURG

2 July 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 Panayotova 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,
Mirjana Lazarova Trajkovska, *judges,*
Pavlina Panova, ad hoc *judge,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 June 2009,

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

PROCEDURE

1. The case originated in an application (no. 27636/04) 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, Ms Egalina Simeonova Panayotova ("the applicant"), on 23 July 2004.

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, Mrs S. Atanasova of the Ministry of Justice.

3. The applicant alleged that she had been deprived of her property in violation of Article 1 of Protocol No. 1 and Articles 8 and 14 of the Convention.

4. On 3 March 2008 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. Zdravka Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 30 January 2009 the Government appointed in her stead Pavlina Panova as an ad hoc judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of the Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1952 and lives in Sofia.

7. In 1967 her parents purchased from the Sofia municipality a two-room apartment of 69 square metres in the centre of the city. The apartment had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria after 1947.

8. After the deaths of her parents the applicant inherited from them.

9. On 23 February 1993 the former pre-nationalisation owners of the apartment brought proceedings against the applicant under section 7 of the Restitution Law, seeking nullification of her title and restoration of their property. The proceedings ended by a final judgment of the Supreme Court of Cassation of 5 March 2004. The courts declared the 1967 contract null and void and restored the plaintiffs' title to the apartment on two grounds: 1) the initial decision to sell the apartment had not been affirmed by the Minister of Architecture and Public Works but by his deputy; and 2) the sale contract had been signed not by the mayor but by one of his deputies. Although the mayor had been entitled to authorise another person to sign such contracts, he had made no written and explicit authorisation.

10. After the final judgment in her case, it became possible for the applicant to seek compensation from the State in the form of bonds, which could be used in privatisation tenders or sold to brokers. The applicant did not immediately apply for bonds.

11. She requested bonds in November 2006, following the amendments to the Restitution Law of June 2006. The regional governor dismissed the request and the applicant appealed against the refusal; the appeal was dismissed in a final judgment of the Supreme Administrative Court of 6 April 2009. The domestic courts found that persons who had not applied for compensation bonds within the relevant time-limit, in force since 2000, could not seek such bonds after the adoption in June 2006 of new paragraphs 2 and 3 of section 7 of the Restitution Law as the amendment at issue did not give rise to a new entitlement to compensation bonds and therefore did not affect the relevant time-limit.

12. In February 2007 the applicant vacated the apartment.

II. RELEVANT BACKGROUND FACTS, 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

14. The applicant complained that she had been deprived of her property arbitrarily, through no fault of her own and without adequate compensation. She relied on 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."

15. The Government did not submit observations.

A. Admissibility

16. 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

17. The applicant contended that she had been the victim of an arbitrary and unlawful deprivation of property and had not received adequate compensation.

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

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

20. The interference was based on the relevant law and pursued an important aim in the public interest, namely to restore justice and respect for the rule of law. As in *Velikovi and Others* (cited above, §§ 162-176), the

Court 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.

21. 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 she was deprived of her property on the ground that relevant documents in 1967 had been signed by the deputies to the officials in whom the relevant power had been vested (see paragraph 9 above). These deficiencies were clearly attributable to omissions on the part of the administration, not to the applicant's parents.

22. 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 the 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.

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

24. In 2004, following the final judgment in her case, she could apply for compensation bonds but failed to do so. However, as the Court found in *Velikovi and Others* cited above, § 226, and in a number of subsequent cases (see *Koprinarovi v. Bulgaria*, no. 57176/00, § 31, 15 January 2009; *Dimitar and Anka Dimitrovi v. Bulgaria*, no. 56753/00, § 31, 12 February 2009; and *Vladimirova and Others v. Bulgaria*, no. 42617/02, § 40, 26 February 2009), owing to the instability of bond prices and the frequent changes in the relevant rules, it could not be considered that at the time the bond scheme secured adequate compensation. Therefore, the applicant's failure to use the bond compensation scheme must be taken into consideration under Article 41, but cannot decisively affect the outcome of the Article 1 Protocol No. 1 complaint.

25. Furthermore, the applicant's request for bonds submitted in November 2006 was dismissed (see paragraph 11 above).

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

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

II. ALLEGED VIOLATION OF ARTICLES 8 AND 14 OF THE CONVENTION

28. The applicant complained under Article 8 of the Convention that she had been deprived of her home and under Article 14 that she had been discriminated against in that the Restitution Law favoured pre-

nationalisation owners and the State to the detriment of post-nationalisation owners.

A. Admissibility

29. The Court notes that these 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.

B. Merits

30. Having regard to its conclusions under Article 1 of Protocol No. 1 and the approach in its *Velikovi and Others* judgment, the Court is of the view that no separate issues arise under Articles 8 and 14 (see, *mutatis mutandis*, *Velikovi and Others*, cited above, § 252).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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

32. The applicant submitted a valuation report of September 2008, by an expert commissioned by her, assessing the value of the apartment she had lost at 118,200 euros (EUR), and claimed this sum in respect of pecuniary damage. In respect of non-pecuniary damage, she claimed EUR 8,000.

33. The Government considered these claims to be excessive. They referred to the fact that the applicant had remained in the disputed apartment until 2007 and to her failure to make use of the bond compensation scheme.

34. Applying the approach set out in similar cases 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 (see *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, §§ 10 and 47, 24 April 2008). The Court will also take into account the applicant's failure to use the bond compensation scheme (see paragraph 26 above and *Todorova and Others*, cited above, §§ 44-46).

35. Having regard to the above, to all the circumstances of the case and to information at its disposal about real property prices in Sofia, the Court awards the applicant EUR 64,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

36. The applicant claimed EUR 1,680 for twenty-eight hours of legal work by her lawyer, Mrs S. Margaritova-Vuchkova, at an hourly rate of EUR 60, after the communication of the application. In support of this claim she presented a contract for legal representation and a time sheet. She requested that any sum awarded under this head be paid directly to Mrs Margaritova-Vuchkova.

37. The applicant claimed another 300 Bulgarian levs (BGN), the equivalent of EUR 150, already paid by her, for legal work by Mrs Margaritova-Vuchkova. She also claimed BGN 800 (the equivalent of EUR 410) for legal fees charged by the lawyer who had prepared her initial application, BGN 314 (the equivalent of EUR 160) for postage and translation for the proceedings before the Court and BGN 432 (the equivalent of EUR 220) for the cost of the valuation report she submitted. In support of these claims she presented the relevant receipts.

38. Separately, the applicant claimed BGN 500 (the equivalent of EUR 255) for work by her lawyer in the domestic proceedings for compensation bonds (see paragraph 11 above). She submitted the relevant receipt.

39. The Government considered these claims to be excessive.

40. 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.

41. In respect of the sum to be paid to Mrs Margaritova-Vuchkova, the Court considers that the number of hours of work claimed is excessive. In view thereof, and also considering that she was not involved in the initial stage of the proceedings and has represented other applicants in identical cases (see *Velikovi and Others*, cited above, §§ 19, 53, 72 and 95), the Court awards EUR 700 under this head, to be transferred directly to the bank account of Mrs Margaritova-Vuchkova.

42. In respect of the remaining costs and expenses for the proceedings before the Court, the Court, having regard to the information in its possession, finds that they were actually and necessarily incurred and reasonable as to quantum. It thus awards the whole sum of EUR 940.

43. In respect of the expenses for legal fees incurred in the domestic proceedings for compensation bonds, the Court notes that in 2006 when the proceedings started the authorities' approach to such requests for

compensation was not yet clear. Only later did it transpire that such requests had no prospects of success (see paragraph 11 above). As the proceedings the applicant brought were directly related to the violation of Article 1 of Protocol No. 1 found in the present case, in that the applicant attempted to obtain at least partial compensation, the Court considers that the expenses in question were necessarily incurred (see, *mutatis mutandis*, *Krushev v. Bulgaria*, no. 66535/01, §§ 63-65, 3 July 2008, and *Simova and Georgiev v. Bulgaria*, no. 55722/00, § 49, 12 February 2009). The Court also considers that they are reasonable as to quantum and awards the applicant the full amount (EUR 255) claimed under this head.

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 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 issues arise under Articles 8 and 14 of the Convention;

4. *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 64,000 (sixty-four thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;
      ii. EUR 1,895 (one thousand eight hundred and ninety-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, EUR 700 (seven hundred euros) of which is to be paid 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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

Claudia Westerdiek Registrar	Peer Lorenzen President