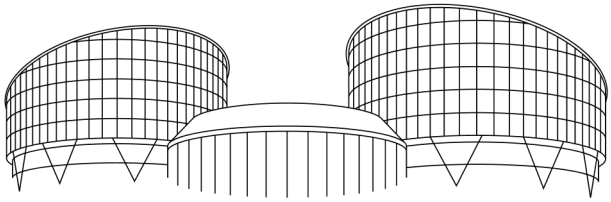

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF PARVANOV AND OTHERS v. BULGARIA

(Application no. 74787/01)

JUDGMENT

STRASBOURG

7 January 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 Parvanov and Others 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,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska, *judges,*
Pavlina Panova, ad hoc *judge,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 1 December 2009,

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

PROCEDURE

1. The case originated in an application (no. 74787/01) 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 three Bulgarian nationals, Mr Plamen Vasilev Parvanov, Mrs Blaginka Stamenova Parvanova and Mrs Diana Koleva Koleva ("the applicants"), on 18 June 2001.

2. The applicants were represented by Mrs N. Sedefova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Kotseva, of the Ministry of Justice.

3. On 5 January 2006 the Court declared the application partly inadmissible and decided to communicate to the Government the complaints concerning the failure of the authorities to provide to the applicants the apartments due as compensation for the expropriation of their property. It also decided to rule on the admissibility and merits of the remainder of the application at the same time (Article 29 § 3).

4. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case. On 30 January 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).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1963, 1940 and 1962 respectively and live in Sofia.

6. The applicants are heirs of Mr Parvan Vasilev Parvanov, Mr Vasil Parvanov Parvanov and Mrs Tsvetanka Parvanova Koleva who owned a house in Sofia with a yard with a total surface area of 581.2 square metres.

A. Expropriation of the property

7. By a mayor's order of 8 April 1987, based on section 98 of the Territorial and Urban Planning Act ("the TUPA"), the house and the yard were expropriated "for embassy needs", but with a view to realising two separate public works' projects: (a) the construction of a block of flats and shops (Project A); and (b) the construction of an embassy (Project B). The area designated for Project A (Plot A) was 328.2 square metres and the area designated for Project B (Plot B) was 253 square metres. The applicants' ancestors' house remained in Plot A. The value of the entire expropriated property was assessed at 25,118.06 old Bulgarian levs (BGL).

8. The mayor's order of 8 April 1987 also provided that for the expropriation of the property "for embassy needs" each of the applicants' antecedents would be compensated with an apartment, situated in a building to be constructed by the Bureau for Servicing the Diplomatic Corps ("the BSDC").

9. By three supplementary orders of 15 April 1988, based on section 100 of the TUPA, the mayor determined the exact location, area and other details in respect of the future apartments offered as compensation. The three apartments had a total value of BGL 59,155.

10. A two-room apartment of 64 square metres was designated for Mr Parvan Vasilev Parvanov, who had passed away on an unspecified date in 1987. By virtue of his will, the property was to be received by his grandson, the first applicant.

11. Mr Vasil Parvanov Parvanov, whose heirs were the first and second applicants, his son and wife, was to receive a three-room apartment with an area of 94 square metres.

12. And lastly, Mrs Tsvetanka Parvanova Koleva was entitled to a three-room apartment of 98 square metres, which was to be received by her daughter, the third applicant.

13. The value of the expropriated property (BGL 25,118.06) was directly credited against the value of the apartments offered as

compensation. As the latter sum was higher, on unspecified dates the applicants and their ancestors paid the difference, BGL 34,036.94, to the State.

14. By orders of 4 and 27 April 1988 Mr Vasil Parvanov Parvanov and the first applicant were provided with temporary housing in two flats owned by the BSDC. It appears that after Mr Vasil Parvanov Parvanov's death the second applicant continued to use the apartment provided for him.

15. Construction of the block of flats in which the apartments offered as compensation were to be located was never commenced.

B. Restitution of the property

16. On 13 April 1992, following the entry into force of the 1992 Restitution Law (see paragraph 29 below), the applicants made a request to the mayor of Sofia for the restitution of the entire property, because neither of the public works projects had commenced and the expropriated house was still standing. No response was received and on an unspecified date in May or June 1992 the applicants appealed against the tacit refusal.

17. On an unspecified date, most likely in August 1992, the expropriated house was pulled down and the BSDC commenced the realisation of Project B (see paragraph 7 above), the construction of a Polish embassy complex.

18. Upon the applicants' appeal against the mayor's tacit refusal, on 7 October 1994 the Sofia City Court found partly in their favour. It noted that their property had been expropriated for two distinct public works projects – Project A, to be realised on Plot A, and Project B, to be realised on Plot B. In so far as the realisation of Project B had commenced on Plot B, this part of the property, namely 253 square metres of the site, could not be restored. However, as Project A had not commenced, the restitution of Plot A, amounting to 328.2 square metres, was possible.

19. The Sofia City Court further noted that under the original expropriation and compensation orders (see paragraphs 7-9 above) the applicants and their antecedents had been provided with apartments as compensation in respect of the property expropriated "for embassy needs" (Plot B) and that the value of Plot A had been credited against the value of the apartments. On this basis, the domestic court held that the restitution of Plot A would be effective upon reimbursement of its value. On the basis of the original expropriation and compensation orders of 1987-88, it calculated that amount to be BGL 22,697.81. Apparently, the value of Plot A was much higher than the value of Plot B (which remained BGL 2,420.27) as this was where the applicants' ancestors' house had been standing.

20. None of the parties appealed against this judgment and it entered into force. In order to effect the restitution, on 4 September 1995 the

applicants paid the State BGL 22,697.81 which, owing to inflation and the depreciation of the Bulgarian currency, equalled approximately USD 330.

21. In 1996 the Sofia municipality petitioned the Sofia City Court to interpret its judgment of 7 October 1994 in respect of whether it still owed the applicants three apartments as compensation.

22. On 27 January 1997 the Sofia City Court refused to provide the interpretation sought, pointing out that its judgment was quite clear as regards the dispute examined, namely about the claimants' right to restitution of the property.

C. Subsequent developments

23. By a letter of 2 December 1997 the BSDC informed the applicants that following the judgment of the Sofia City Court of 7 October 1994 the apartments offered as compensation for the expropriation of the property were no longer due.

24. On 16 July 1998 the mayor of Sofia revoked the three orders of 15 April 1988 (see paragraph 9 above). The applicants appealed against this decision.

25. By a judgment of 21 November 1999 the Sofia City Court dismissed the appeal. The applicants appealed again.

26. In a final judgment of 29 December 2000 the Supreme Administrative Court ("the SAC") quashed the lower court's judgment and the decision of the mayor of Sofia of 16 July 1998. However, it based its conclusions on the finding that it had not been necessary for the mayor to formally revoke the three orders of 15 April 1988; they had been automatically revoked by virtue of the judgment of 7 October 1994 (see paragraphs 18-20 above). In particular, the Supreme Administrative Court held:

> "The revocation of the expropriation, even concerning only part of the [original] property, in respect of which the requirements of [the 1992 Restitution Law] were met, resulted, by virtue of the [judgment of the Sofia City Court of 7 October 1994], in the revocation of the orders under sections 98 and 100 [of the TUPA], as it is to be considered that no expropriation ever took place. That is why the [Sofia] mayor did not have to expressly revoke the orders under section 100 [of the TUPA]."

27. The SAC did not explain why it considered that the partial restitution of the applicants' property by virtue of the judgment of 7 October 1994 had removed their entitlement to any compensation at all.

28. No apartments or other compensation have thereafter been provided to the applicants. Neither did the authorities ever reimburse the applicants for any of the payments they had made to the State in respect of (1) the difference in the value of the apartments offered as compensation and the expropriated property (BGL 34,036.94), which the applicants and their ancestors had paid to the State in the 1980s (see paragraph 13 above); or

(2) the value of Plot A (BGL 22,697.81), which had been credited against the value of the apartments promised as compensation and which the applicants had paid to the State in order to effectuate the partial restitution (see paragraph 20 above).

29. On an unspecified date after June 2002 the first applicant was evicted from the flat provided for him as temporary housing (see paragraph 14 above).

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Expropriation of private property for public use

30. The relevant law and practice regarding the expropriation of private property for public use has been summarised in the judgment of *Kirilova and Others v. Bulgaria* (nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 72-79, 9 June 2005).

B. Restitution of private property expropriated for public use

31. In 1992 the Bulgarian Parliament adopted the Law on the Restitution of Property Expropriated under Building Planning Legislation (*Закон за възстановяване на собствеността върху някои отчуждени имоти по ЗТСУ, ЗПИНМ, ЗБНМ, ЗДИ и ЗС*, "the 1992 Restitution Law") which provided for the restitution of expropriated property where specific conditions were met.

32. Section 5 § 1 of the 1992 Restitution Law provides that upon the revocation of an expropriation, any property received in compensation by the claimant shall pass to the municipality by virtue of the ruling or judgment ordering the revocation. Any amounts paid by an owner who had received restitution, to cover the difference between the value of an expropriated property and any property received as compensation, are to be reimbursed by the authorities within two months of the date of the ruling or judgment granting the restitution (section 6 § 2).

33. The domestic courts have examined numerous actions under the 1992 Restitution Law. In a case concerning formerly co-owned property, and where the restitution had been sought by only some of the co-owners, the courts ordered partial restitution, in accordance with the co-owners' respective shares, and partial return of the compensation received (judgement no. 2357 of 10 February 1994 of the Supreme Court, case no. 2643/93).

34. The domestic courts also consider that in cases where the expropriated property has lost some of its value because, for instance, any buildings on it have been demolished, the former owners, if they decide to

initiate restitution proceedings, still owe the State the entire compensation they have received (judgment no. 1471 of 21 November 1994 of the Supreme Court, case no. 4778/93; judgment no. 2013 of 7 December 1995 of the Supreme Court, case no. 1903/94).

THE LAW

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

35. The applicants complained that they had not received the three flats offered as compensation for their ancestors' expropriated property. They contended that as the State had received the full price of the apartments, it was still obliged to construct and deliver this property and that depriving them of their entitlement to receive the property amounted to a violation of Article 1 of Protocol No. 1.

36. The Court is of the view that the complaint, raised under Article 1 of Protocol No. 1 and Article 13, falls to be examined solely under 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."

37. The Government did not comment on the admissibility and merits of the complaint.

A. Admissibility

38. The Court notes that the 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

39. The Court has held that "possessions" within the meaning of Article 1 of Protocol No. 1 do not only include existing possessions or

assets but also claims in respect of which an applicant has at least a legitimate expectation of obtaining effective enjoyment of a property right (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII).

40. In the present case, the Court notes that by virtue of the orders of 8 April 1987 and 15 April 1988 (see paragraphs 7-9 above) the authorities offered to the applicants and their antecedents three flats in compensation for their expropriated property. As in the case of *Kirilova and Others v. Bulgaria*, nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 104, 9 June 2005, which has some similarities with the present case, the Court considers that those orders afforded the applicants vested rights in the flats offered. Those vested rights remained undisputed by the authorities at least until 1994, when the applicants obtained partial restitution of their property. Therefore, the applicants had a "possession" within the meaning of Article 1 of Protocol No. 1, recognised also by domestic law.

41. While, as in *Kirilova and Others* (see § 86 of that judgment), the Court is not competent *ratione temporis* to deal with the expropriation of the applicants' property in 1987, it must examine in the present case whether, as alleged by the applicants, they were unlawfully deprived of their vested rights to receive three apartments.

42. The Court notes in this respect that in its judgment of 29 December 2000 (see paragraph 26 above) the Supreme Administrative Court found that the above-mentioned orders of 15 April 1988, which, as discussed above, afforded the applicants vested rights in the three apartments at issue, had to be considered to be automatically revoked by virtue of the judgment of the Sofia City Court of 7 October 1994 (see paragraphs 18-19 above). Although this finding of the Supreme Administrative Court was only made in proceedings directly concerning a narrower issue, that of the validity of the decision of the mayor of Sofia of 16 July 1998 (see paragraph 26 above), the Court is satisfied that the judgment's legal effect was such as to preclude any subsequent attempts on the part of the applicants to seek the delivery of the apartments at issue or any compensation for their expropriated property. Indeed, the Court observes that following that judgment no compensation was provided to the applicants and the first applicant was evicted from the municipal apartment where he had been temporarily housed (see paragraphs 28-29 above).

43. The Court thus considers that the Supreme Administrative Court's judgment of 29 December 2000 deprived the applicants of their vested right in the three apartments offered by the authorities as compensation for their expropriated property, and thus deprived them of their possessions, within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

44. The Court has held that in order to comply with the requirements of Article 1 of Protocol No. 1, any deprivation of property must, in the first

place, meet the conditions provided for by law. The requirement of lawfulness, within the meaning of the Convention, means not only compliance with the relevant provisions of domestic law, but also compatibility with the rule of law. It thus implies that there should be protection from arbitrary action (see *Zlínsat, spol. s r.o., v. Bulgaria*, no. 57785/00, § 98, 15 June 2006).

45. The Court must examine, therefore, whether those requirements were satisfied in the present case.

46. It notes that the relevant law provided that upon the revocation of an expropriation, any property received as compensation by the former owner passed back to the municipality (see paragraph 32 above). However, the law did not set out rules in respect of cases of partial revocation of an expropriation.

47. In their decisions in the applicants' case the domestic courts did nothing to dispel that uncertainty. In its judgment of 29 December 2000 the Supreme Administrative Court found that the return of Plot A, which had been only a part of the initial expropriated property, automatically removed the applicants' entitlement to any compensation, including for Plot B, which remained in State hands. However, the Supreme Administrative Court failed to provide any reasoning at all as to why it reached this conclusion. It merely stated that the fact that the restitution had been partial was irrelevant (see paragraphs 26-27 above).

48. On the other hand, in its earlier judgment of 7 October 1994 the Sofia City Court apparently accepted that the flats at issue in the present case had been earmarked as compensation for the expropriation of Plot B, in respect of which restitution could not be made and which remained State-owned. Accordingly, the Sofia City Court granted the applicants' restitution request only in part and held that they were to "return" a proportionate part of the compensation awarded (see paragraph 19 above).

49. There have been other cases where the domestic courts have accepted that the partial restitution of a property under the 1992 Restitution Law necessitated that the former owners return only part of the compensation received (see paragraph 33 above).

50. In view of these apparently contradictory holdings of the domestic courts and, moreover, having regard to the failure of the Supreme Administrative Court to explain why it departed from the apparent logic of the Sofia City Court's earlier judgment, the applicants' deprivation of their possessions cannot have been compatible with the rule of law and free of arbitrariness and cannot thus have met the requirement of lawfulness under Article 1 of Protocol No. 1.

51. In view thereof, the Court concludes that there has been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. In respect of pecuniary damage, the applicants claimed three apartments equivalent to the ones in which they had been afforded vested rights as compensation for their expropriated property, or, failing that, the value of three such apartments. They also claimed the rent which they would have received had they rented out the three apartments between 1992 and 2006. In support of those claims they submitted valuation reports prepared in July 2006 by an expert commissioned by them.

54. In particular, the first applicant claimed BGN 97,000, the equivalent of approximately EUR 50,000, in respect of the value of the two-room apartment of 64 square metres offered as compensation to him (see paragraph 10 above). He also claimed BGN 15,329, the equivalent of EUR 7,860, for lost rent.

55. The second applicant claimed BGN 142,000, the equivalent of approximately EUR 72,800, in respect of the value of the three-room apartment of 94 square metres offered as compensation to Mr Vasil Parvanov Parvanov (see paragraph 11 above). She also claimed BGN 22,780 (the equivalent of EUR 11,680) for lost rent.

56. In respect of the value of the third apartment, a three-room one with an area of 98 square metres, the third applicant, to whom that apartment had been offered as compensation (see paragraph 12 above), claimed BGN 146,000 (EUR 74,900). She also claimed BGN 46,194 (EUR 23,700) for lost rent.

57. The Government did not comment.

58. The Court found that in the present case the applicants were deprived of their vested rights in three flats, in violation of Article 1 of Protocol No. 1 (see paragraphs 50-51 above). Therefore, its starting point for determining pecuniary damages will be the market value of three such flats.

59. The Court notes, in addition, that the applicants got back and after 1995 benefitted from the use of Plot A, part of the expropriated property. While it is true that they had to pay the State its value in order to obtain its

restitution and to preserve their vested right to the compensation due under the original expropriation order, the Court observes that as a result of inflation and the depreciation of the Bulgarian currency, they paid an amount which was vastly inferior to the real value of Plot A (see paragraphs 18-20 above). The applicants thus derived a significant benefit, which the Court must take into account when assessing the actual pecuniary consequences of the violation of their rights under Article 1 Protocol No. 1.

60. The Court will also take into account the fact that both the first and second applicants inherited from Mr Vasil Parvanov Parvanov, who had been entitled to receive one of the flats, the three-room flat of 94 square metres (see paragraph 11 above). Therefore, the two of them were equally affected by the deprivation of the vested right to receive that property. Regardless of the fact that it was the second applicant who claimed all damages in respect of that apartment (see paragraph 55 above), possibly on the basis of an agreement between the two applicants, who are a mother and son, in the absence of any proof that a legally binding transfer of rights has occurred, the Court will award pecuniary damages in respect of that apartment to both of them in equal parts, seeing that they apparently inherited from Mr Vasil Parvanov Parvanov in equal shares.

61. Taking into consideration the valuation reports submitted by the applicants, the information available to it about real estate prices in Sofia and the circumstances referred to in the paragraphs above, the Court awards the following amounts under this head:

(a) to the first applicant: EUR 67,000;
(b) to the second applicant: EUR 28,000; and
(c) to the third applicant: EUR 59,000.

2. Non-pecuniary damage

62. The applicants claimed non-pecuniary damage, without indicating an exact sum. They submitted that they had suffered frustration and anxiety over a period of many years.

63. The Government did not comment.

64. The Court considers that the breach of Article 1 of Protocol No. 1 must have caused the applicants anguish and frustration. Ruling in equity, it awards each of them EUR 2,000.

B. Costs and expenses

65. The applicants claimed EUR 2,000 for forty hours of legal work by their representative, Mrs N. Sedefova, at an hourly rate of EUR 50, after the communication of the application. In support of this claim they presented a contract for legal representation and a time sheet. They claimed another BGN 940, the equivalent of EUR 482, for the cost of the valuation reports they submitted (see paragraph 53 above) and for the translation of their

submissions before the Court, submitting the relevant receipts. They requested that any sum awarded under this head be paid directly into the bank account of Mrs Sedefova.

66. The Government did not comment.

67. 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.

68. In the present case, having regard to all relevant factors, the Court considers that the costs and expenses claimed have been actually and necessarily incurred and are reasonable as to quantum. Accordingly, the Court awards in full the amounts claimed. These are to be paid directly into the bank account of the applicants' legal representative, Mrs Sedefova.

C. Default interest

69. 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, 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. to the first applicant, Mr Plamen Vasilev Parvanov, EUR 67,000 (sixty-seven thousand euros) in respect of pecuniary damage and EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts;

ii. to the second applicant, Mrs Blaginka Stamenova Parvanova, EUR 28,000 (twenty-eight thousand euros) in respect of pecuniary damage and EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts;

iii. to the third applicant, Mrs Diana Koleva Koleva, EUR 59,000 (fifty-nine thousand euros) in respect of pecuniary damage and EUR 2,000 (two thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable on these amounts;

iv. to the three applicants jointly, EUR 2,482 (two thousand four hundred and eighty-two euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, to be paid directly into the bank account of their 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 applicants' claims for just satisfaction.

Done in English, and notified in writing on 7 January 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek	Peer Lorenzen
Registrar	President