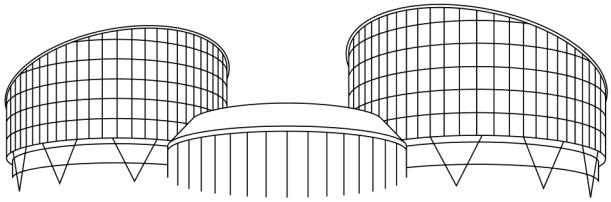

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

CASE OF PESHEVI v. BULGARIA

(Application no. 29722/04)

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 Peshevi v. Bulgaria,

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

Peer Lorenzen, *President,*
Rait Maruste,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
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. 29722/04) 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 two Bulgarian nationals, Mr Nikola Kotzev Peshev and Mrs Roza Grigorova Pesheva ("the applicants"), on 29 July 2004.

2. The applicants were represented by Mr S. Andreev, 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 applicants alleged that they had been deprived of their property in violation of Article 1 of Protocol No. 1 and Article 6 of the Convention.

4. On 25 February 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. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 30 January 2009 the Government, pursuant to Rule 29 § 1 (a), informed the Court that they had appointed Ms Pavlina Panova as an *ad hoc* judge in her stead.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1942 and 1947 respectively and live in Sofia.

7. In April 1979 the two applicants and the second applicant's mother bought from the Sofia municipality a four-room apartment of 121 square metres in the centre of the city. In September 1979 the second applicant's mother died; her heirs were the second applicant and her brother. In 1993 the second applicant's brother died; the second applicant was his heir.

8. The apartment had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria after 1947. In February 1993 the heir of its former pre-nationalisation owner brought proceedings under section 7 of the Restitution Law seeking the nullification of the applicants' title and the restoration of her own title.

9. The proceedings ended by a final judgment of the Supreme Court of Cassation of 16 February 2004. The courts found that the applicants' title was null and void on the ground that the 1979 contract had not been signed 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. Furthermore, the initial approval of the sale in 1977 had not been signed by the mayor and had not also been confirmed by the mayor of the region; instead, it had once again been their deputies who had signed.

10. Later in 2004 the applicants attempted unsuccessfully to have the proceedings reopened.

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

12. On an unspecified date the applicants vacated the apartment. In July 2005 they were granted the tenancy of a four-room municipal apartment, which they share with their daughter and her husband and son.

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 applicants complained under Article 1 of Protocol No. 1 that they had been deprived of their property arbitrarily, through no fault of their own and without adequate compensation. Article 1 of Protocol No. 1 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 comment.

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

18. The events complained of constituted an interference with the applicants' property rights.

19. 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.

20. 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 on the ground that in 1977 and 1979 relevant documents had been signed by the deputies to the officials in whom the relevant power had been vested. These deficiencies were clearly attributable to omissions on the part of the local administration, not the applicants.

21. 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.

22. The question thus arises whether adequate compensation was provided to the applicants.

23. Following the final judgment in their case they could have applied 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 frequent changes in the relevant rules, it could not be considered that at the time the bond scheme secured adequate compensation. Therefore, the applicants' failure to use the bond compensation scheme must be taken in consideration under Article 41, but cannot affect decisively the outcome of the Article 1 Protocol No. 1 complaint.

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

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

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

26. The applicants complained under Article 6 § 1 that in their case the domestic courts had decided arbitrarily.

A. Admissibility

27. 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

28. The Court has examined above the applicants' complaint that the judicial decisions in their case resulted in arbitrary deprivation of property contrary to Article 1 of Protocol No. 1. Therefore, it considers that no separate issue arises under Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The applicants submitted a valuation report of March 2008, by an expert commissioned by them, assessing the value of the apartment they had lost at 618,500 Bulgarian levs (BGN), the equivalent of approximately 317,000 euros (EUR), and claimed this sum in respect of pecuniary damage. In respect of non-pecuniary damage, they claimed BGN 100,000, the equivalent of EUR 51,200.

31. The Government considered these claims to be excessive. They pointed out that the applicants had failed to make use of the bond compensation scheme and that they had been granted the tenancy of a municipally-owned apartment.

32. 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 applicants 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 applicants' failure to use the bond compensation scheme (see paragraph 23 above and *Todorova and Others*, cited above, §§ 44-46).

33. 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 applicants 102,000 EUR in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

34. Without indicating exact sums, the applicants claimed reimbursement of legal fees and "procedural expenses".

35. The Government urged the Court to dismiss the claim for "procedural expenses".

36. The Court notes that the applicants' claim for costs and expenses is not itemised and that the applicants have not provided any relevant supporting documents. Therefore, the Court finds that the claim for costs and expenses must be dismissed in whole.

C. Default interest

37. 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 6 § 1 of the Convention;

4. *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, EUR 102,000 (one hundred and two thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
   (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;

5. *Dismisses* the remainder of the applicants' 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