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

FIFTH SECTION

CASE OF SIMOVA AND GEORGIEV v. BULGARIA

(Application no. 55722/00)

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 Simova and Georgiev 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. 55722/00) 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, Mrs Mariyka Borisova Simova and Mr Orlin Marinov Georgiev ("the applicants"), on 3 December 1999.

2. The applicants were represented by Ms M. Barutchiyska, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Dimova 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 13 of the Convention.

4. On 6 September 2007 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on its admissibility and merits at the same time (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 applicants were born in 1937 and 1960 respectively and live in Sofia.

7. In 1984 the first applicant purchased from the State a two-room apartment of 48 square metres located on a main commercial street in Sofia. The apartment had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and the following years.

8. In 1987 the first applicant transferred her title to her son, the second applicant, but preserved the right to use one room of the apartment until the end of her life.

9. After the adoption of the Law on the Restitution of Ownership of Nationalised Real Property in 1992, the former pre-nationalisation owners of the apartment brought proceedings against the first applicant under section 7 of that Law seeking the nullification of her title and the return of their former property. They also brought a *rei vindicatio* action against the second applicant.

10. In 1997 the District Court found that the 1984 transaction had been valid and dismissed the claims.

11. On appeal, on 6 August 1998 the claims were granted by the Sofia City Court, which also ordered the applicants to vacate the apartment. The final judgment was that of the Supreme Court of Cassation of 20 July 1999, which upheld the Sofia City Court's judgment.

12. The courts found that in 1984, at the time of the transaction, the building plan of Sofia had envisaged the demolition of the applicants' apartment building and the construction of a new apartment building. The relevant regulations had prohibited the sale of State apartments in such circumstances. It followed that the first applicant had obtained the apartment unlawfully. Thus, her title had been null and void and the second applicant's title was null and void as well.

13. The applicants were evicted in April 2000.

14. In 2000, 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.

15. On 5 February 2001 the regional governor of Sofia refused the applicants' request for compensation bonds. Upon the applicants' appeal, in judgments of 2002 and 2003 the courts quashed the refusal and granted the applicants' request.

16. In June 2003 an expert appointed by the courts assessed the market value of the apartment at 22,032 Bulgarian levs (“BGN”), the equivalent of

approximately EUR 11,200. The applicants submitted the opinion of another expert, who assessed the apartment's market value at BGN 40,490 (the equivalent of approximately EUR 20,700).

17. In February 2004 the applicants received compensation bonds for BGN 21,600 (the equivalent of approximately EUR 11,000).

18. They sold them on 26 November 2004, when bonds were traded at 68% of face value, and obtained BGN 15,055.20 (the equivalent of approximately EUR 7,680).

19. In 1999 the first applicant brought an action under the State Responsibility for Damage Act seeking BGN 44,800 in damages from the State and the Sofia municipality, which had sold her the apartment in breach of the relevant domestic law. On 10 April 2006 the claim was disallowed in a final judgment of the Sofia Court of Appeal, which found that the authorities' actions in concluding the contract of sale did not give rise to responsibility under the State Responsibility for Damage Act and that in any event the first applicant could have refused to buy an apartment in breach of the law.

II. RELEVANT DOMESTIC LAW AND PRACTICE

20. 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

21. The applicants complained that they had been deprived of their property in violation of Article 1 of Protocol No. 1 to the Convention, 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."

22. The Government disagreed.

A. Admissibility

23. The Court notes that in 1987 the first applicant transferred her title to the second applicant, but preserved the right to use one room in the apartment until the end of her life. Although she did not have ownership rights at the time of the impugned events, her right to use the apartment also constitutes a possession within the meaning of Article 1 of Protocol No. 1. The first applicant can therefore be considered a victim of the alleged violation of that provision and her complaint is not incompatible *ratione personae* with the Convention.

24. The Court also notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

25. The applicants argued that the first applicant had bought the apartment in good faith and that they had not been responsible for the administrative omission that led to the nullification of their respective titles.

26. The Government submitted that the restitution laws adopted after the fall of communism had had the aim of 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 benefited from the use of the apartment and had received compensation through bonds. Referring to the case of *James and Others v. the United Kingdom* (21 February 1986, Series A no. 98), the Government argued that in cases of deprivation of property, Article 1 of Protocol No. 1 did not require full compensation.

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

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

29. 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.

30. Applying the criteria set out in *Velikovi and Others* (cited above, §§ 183-192), the Court notes that the applicants' respective titles were declared null and void and they were deprived of their property on the sole ground that in 1984 the State had sold the first applicant an apartment in a

building which had been earmarked for demolition under the city's building plan (see paragraph 12 above). It has not been alleged that the applicants had been aware of the existence of this plan, which was never implemented, or that the sale of the apartment to the first applicant had in any way impeded its implementation. The State administration, not the applicants, had been responsible for the decision to sell the apartment.

31. 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 to the Convention could not be achieved without adequate compensation. The applicants undertook all necessary steps under the bonds compensation scheme but only obtained the equivalent of EUR 7,680 – 68% of the value of the apartment in 2003, as assessed by the court-appointed expert, and 37% of the same value, as assessed by the applicants' expert (see paragraphs 16-18 above), whereas during that period real-estate prices were rising rapidly.

32. The Court is not convinced that this inadequate compensation was justified. Furthermore, it notes that the applicants were not provided with municipal housing after their eviction.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

34. The applicants complained under Article 13 that they did not have an effective remedy in respect of the alleged violation of Article 1 of Protocol No. 1.

A. Admissibility

35. Having regard to its conclusion in paragraphs 23-24 above, the Court considers that the complaint under Article 13 must be declared admissible.

B. Merits

36. 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 issue arises under Article 13 and that it is not therefore necessary to examine the complaint under this provision separately (see *Velikovi and Others*, cited above, § 252).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

37. 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

38. The applicants submitted a valuation report of October 2007, by an expert commissioned by them, assessing the value of the apartment they had lost at EUR 101,240. In respect of pecuniary damage, they jointly claimed this sum, reduced by the sum they had obtained from the sale of their compensation bonds – EUR 7,680 (see paragraph 18 above). They also claimed non-pecuniary damage, without indicating an exact sum. In this respect, they contended that their health had deteriorated as a result of the anguish related to the loss of the apartment.

39. The Government did not comment.

40. The Court notes that the second applicant was the owner of the apartment in question and that the first applicant had a right to use a room in it until the end of her life. While it is true that, as a result, the pecuniary damage suffered by each of the two applicants was not the same, the Court, having regard to the specific circumstances of the present case, considers it appropriate to award a sum of money to the applicants jointly.

41. Applying the approach set out in *Todorova and Others v. Bulgaria* ((just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, §§ 10 and 47, 24 April 2008), 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 apartment and all other relevant circumstances.

42. To determine the amount to be awarded, the Court takes into account publicly available information on real-estate prices in Bulgaria and the fact that the applicants received some compensation.

43. Having regard to these considerations, the Court awards the applicants jointly EUR 47,000 in respect of pecuniary and non-pecuniary damage combined.

B. Costs and expenses

44. The applicants claimed EUR 1,500 for legal work by their lawyer. In support of the claim they submitted a contract for legal representation in which this remuneration was agreed upon. They also claimed EUR 188 for translation of documents and submitted receipts for this amount.

45. Separately, the applicants claimed the sum of BGN 2,155.67 (approximately EUR 1,100), which had been paid by the first applicant in court fees in the 1999-2006 proceedings for damages. In support of this claim they submitted a bank document certifying the payment.

46. The Government did not comment.

47. 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.

48. In the present case, regard being had to the information in its possession, the Court considers that the costs for lawyer's fees and for translation of documents were actually and necessarily incurred. As to quantum, the Court finds it reasonable to award EUR 1,200 for the said costs and expenses.

49. In respect of the expenses for court fees incurred by the first applicant in the proceedings for damages, the Court notes that in 1999 when the proceedings started, the domestic courts' approach to such claims was not yet settled. Only later did it become clear that such claims for damages by persons in the first applicant's position had no prospects of success (see *Velikovi and Others*, cited above, § 127). As the first applicant's claim was directly related to the events which gave rise to the violation of Article 1 of Protocol No. 1 found in the present case, in that it concerned the responsibility of the State for the applicant's deprivation of property, the Court considers that the expenses in question were necessarily incurred and are reasonable as to quantum (see *Krushev v. Bulgaria*, no. 66535/01, §§ 63-65, 3 July 2008). It thus awards the applicants EUR 1,100 for the said costs and expenses.

C. Default interest

50. 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 it is not necessary to examine separately the applicants' complaint under Article 13 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicants jointly, 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 47,000 (forty-seven thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 2,300 (two thousand three hundred 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;

5. *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