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

FIFTH SECTION

CASE OF VLADIMIROVA AND OTHERS v. BULGARIA

(Application no. 42617/02)

JUDGMENT

STRASBOURG

26 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 Vladimirova and Others 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 3 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 42617/02) 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, Ms Nadejda Stoyanova Vladimirova, Mr Hristo Velimirov Vladimirov and Mrs Ivanka Marinova Petkova ("the applicants"), on 25 November 2002.

2. The applicants were represented by Ms S. Margaritova-Vuchkova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms S. Atanasova, of the Ministry of Justice.

3. On 5 November 2007 the President of the Fifth Section decided to give notice of the application to the Government and to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. 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

5. The first applicant, Mrs Nadezhda Stoyanova Vladimirova, was born in 1945. Her husband, Mr Hristo Velimirov Vladimirov, born in 1946, and her mother, Mrs Ivanka Marinova Petkova, born in 1920, are the second and third applicants. All applicants are Bulgarian nationals and live in Sofia.

6. In 1968 the applicants purchased from the State a four-room apartment of 140 square metres in the centre of Sofia. Until then, the applicants' family and two other families had been sharing the apartment as tenants. The apartment had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and the following several years. The apartment was on the third floor of a five-storey building constructed in the beginning of the 1930s.

7. After the adoption of the Restitution Law in 1992, the former pre-nationalisation owners brought proceedings under section 7 of that law against the applicants.

8. By judgment of 30 July 1996 the District Court found that the 1968 transaction was null and void on several grounds, including abuse of office, since at the relevant time the second applicant's father had been an employee of the municipal real estate service. The applicants appealed.

9. By judgment of 12 April 2000 the Sofia City Court upheld the lower court's judgment while it modified its reasoning. The court found that the allegation about abuse had remained unproven, the very fact that a relative of the applicants had worked in the municipal real estate service being insufficient.

10. The court found, however, that a relevant document concerning the 1968 transaction had been signed by the deputy to the official in whom the relevant power had been vested. The court considered that as a result the applicants' title was null and void. The applicants were ordered to vacate the apartment.

11. The judgment of the Sofia City Court was recorded in the court's register on 19 June 2000. From that moment it became possible for the parties to learn about that judgment, if they visited the Sofia City Court's registry.

12. The applicants, who had been waiting for the Sofia City Court's judgment since 10 May 1999, the date of the last hearing, checked the register on an unspecified date between 19 August and 20 September 2000. On 20 September 2000 they submitted a petition for review (cassation) against the Sofia City Court's judgment.

13. By decisions of 22 February 2001, 26 March and 25 October 2002 the Supreme Court of Cassation decided that the cassation appeal had been

submitted outside the relevant two-month time limit, which had expired on 19 August 2000 and refused to renew that time limit. The Supreme Court of Cassation agreed with the applicants that the Sofia City Court had delivered its judgment more than one year after the last hearing in the case and that the applicants had never been informed that the judgment had been ready and recorded. It found, however, that according to the relevant law the two-month period for the submission of a petition for review (cassation) ran from the date on which the impugned judgment had been made available in the court's register.

14. On unspecified dates between 2000 and 2002, 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.

15. The applicants were evicted in March 2004.

16. In 2003 the applicants were granted the tenancy of a two-room municipal apartment, which they rented at low regulated price. In order to obtain this tenancy, the applicants were required to declare their financial situation.

17. In November 2005 the municipality sold that apartment to the applicants for a regulated price below market value – 31,300 Bulgarian levs (BGN), the equivalent of approximately EUR 16,000. The applicants paid, in addition, the equivalent of approximately EUR 650 in fees.

18. In 2003 the applicants issued proceedings for damages against the State under the State Responsibility for Damage Act, arguing that the State administration had been responsible for the omission that had led to the nullification of their title. In accordance with their practice in similar cases, the courts rejected those claims. The final judgment was delivered by the Supreme Court of Cassation on 1 November 2007.

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. 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

20. The applicants complained that they had been deprived of their property arbitrarily, through no fault of theirs and without adequate compensation. They 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."

21. The Government contested that allegation.

A. Admissibility

22. The Government stated that the applicants had submitted their petition for review (cassation) out of time and had therefore failed to make use of a relevant remedy.

23. The applicants replied that in the particular circumstances the cassation appeal was not an effective remedy, having regard to the established practice of the Supreme Court of Cassation, noted by the Court in *Velikovi and Others* (cited above). They also submitted that the approach of the Supreme Court of Cassation, which declared inadmissible their petition for review (cassation), was arbitrary and contrary to the Convention as it failed to take into account the fact that the judgment of the Sofia City Court of 12 April 2000 had not been served.

24. The Court notes that in most cases an applicant claiming a breach of Article 1 of Protocol No. 1 allegedly resulting from decisions of the Bulgarian courts must make use of the possibility to submit a cassation appeal (or, as regards older cases as the present one, a "petition for review") to the Supreme Court of Cassation (or, as regards older cases, the Supreme Court) before bringing his grievance to the attention to the European Court of Human Rights (see, for example, *Kehaya and Others v. Bulgaria*, nos. 47797/99 and 68698/01, 12 January 2006).

25. The Court reiterates, however, that under Article 35 § 1 of the Convention the only remedies required to be exhausted are those that are

effective and capable of redressing the alleged violation (see *Sejdovic v. Italy* [GC], no. 56581/00, § 45, ECHR 2006-). While mere doubts about the effectiveness of a remedy are not sufficient to dispense the applicant from the obligation to use it, the situation is different where it has been established, including on the basis of domestic practice, that the remedy in question has no reasonable prospects of success (see *Radio France and Others v. France* (dec.), no. 53984/00, 23 September 2003, § 34 and *Sejdovic v. Italy,* cited above, §§ 45-52).

26. In the present case it is not disputed that at the relevant time, according to the Supreme Court of Cassation's established practice, property titles were considered null and void where a relevant document had been signed by the deputy to the official in whom the relevant power had been vested (see *Velikovi and Others*, §§ 122). In these circumstances, any attempt by the applicants to argue before the Supreme Court of Cassation that the administrative omission at issue in their case (see paragraph 10 above) should not result in their title being declared null and void was bound to fail.

27. The Court finds, therefore, that in the specific circumstances the cassation appeal was not an effective remedy and the applicants were not bound to make use of it. It is thus unnecessary to deal with applicants' argument that their petition for review (cassation) should not have been declared time-barred if the domestic authorities had acted in the light of their Convention obligations to secure their right of access to court. It follows that the Government's objection concerning the exhaustion of domestic remedies must be rejected.

28. The Court further observes that the applicants submitted their application to the Court less than six months following the unfavourable outcome of their efforts to demonstrate that their petition for review (cassation) had been submitted in time but more than six months after 19 August 2000, the date on which the judgment declaring the applicants' title null and void became final (see paragraphs 1 and 13 above). The Court must therefore examine whether the applicants have complied with the six-month time limit under Article 35 § 1 of the Convention.

29. The Court recalls that in other similar cases of the type of *Velikovi and Others* (cited above) it found that the relevant events must be seen as a continuing situation ending with the actual receipt by the applicants of compensation, if any (see *Shoilekov and Others v. Bulgaria* (dec.), no. 61330/00, 66840/01 and 69155/01, 18 September 2007 and *Velikovi and Others*, cited above, § 161). The present case does not disclose any material difference. In particular, the applicants' complaints concerned not only the nullification of their title but also the alleged lack of adequate compensation and the legal and practical developments in this respect after 2000. The Court has held that the assessment of the hardship suffered by the applicants and the adequacy of the compensation actually obtained, in one

form or another, including the possibilities for the applicants to secure a new home for themselves, is a decisive element in the examination of the complaints of this type (see *Velikovi and Others*, cited above, §190).

30. Having regard to the fact that the relevant developments concerning compensation for the applicants continued in 2003, 2005 and ended in 2007 (see paragraphs 16-18 above), the Court finds that the application cannot be dismissed for failure to observe the formal requirements of Article 35 § 1 of the Convention.

31. The Court further 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

32. The applicants stated, *inter alia*, that they had been the victims of an arbitrary and unlawful deprivation of property which had been disproportionate to the legitimate aims of the Restitution Law. The applicants had suffered an excessive burden. In particular, the bonds compensation scheme which the applicants did not use did not secure adequate compensation because at the relevant time they could not obtain more than the equivalent of approximately EUR 12,300 – 20% of the value of the apartment as assessed in accordance with the applicable law.

33. The Government underlined the importance of the legitimate aims pursued by the Restitution Law and stated, *inter alia*, that the municipal authorities had secured housing to the applicants and that compensation bonds for the loss of their property had been available to them. However, the applicants had missed the opportunity to obtain compensation bonds.

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

35. The facts complained of 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.

36. 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 sole ground that a relevant document had been signed in 1968 by the deputy to the official in whom the relevant power had been vested. The State administration, not the applicants, had been responsible for that omission.

37. 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.

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

39. The Court observes that in 2003 they were provided with a two-room municipal apartment to rent and in 2005 purchased it at a regulated price, which was below market prices (see paragraphs 16 and 17 above). These developments had the effect of alleviating to a certain extent the burden inflicted on the applicants by the application of the Restitution Law in their case but cannot, in the Court's view, be seen as measures securing adequate compensation for the deprivation of property.

40. It is true that in 2000 the applicants could have applied for compensation bonds. They did not do so, as in one of the applications examined in *Velikovi and Others* (see §§ 226-228) – the case of *Tzilevi*. The Court considers that, as a result, the applicants forewent the opportunity to obtain at least between 15% and 25% of the value of the property taken away from them (assessed in accordance with the relevant regulations), 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 with effect as of 2007 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 (*Velikovi and Others*, cited above, §§ 191 and 226). As the Court ruled in *Velikovi and Others*, the applicants' failure to use the bonds compensation scheme must be taken in consideration under Article 41, but cannot affect decisively the outcome of their Article 1 Protocol 1 complaint.

41. In these circumstances, the Court finds that no clear and foreseeable possibility to obtain adequate compensation was secured to the applicants.

42. There has therefore been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicants claimed 252,710 euros (EUR) in respect of pecuniary damage. In their view and according to an expert appointed by them, this sum represented the real market value of the apartment as of December 2007. Stressing that the events complained of had caused them significant distress, the applicants also claimed EUR 24,000 in respect of non-pecuniary damage (EUR 8,000 per applicant).

45. The Government considered that the claim in respect of pecuniary damage was excessive. As regards non-pecuniary damage, the Government suggested that the award should not exceed the sums awarded in *Todorova and Others v. Bulgaria* (just satisfaction), nos. 48380/99, 51362/99, 60036/00 and 73465/01, 24 April 2008.

46. The Court, applying the approach defined in its *Todorova and Others* judgment (cited above), considers that it is appropriate to award a lump sum to the applicants in respect of pecuniary and non-pecuniary damage.

47. In determining the amount, the Court takes into account the evidence submitted by the parties, including about facts related to the hardship suffered by the applicants as a direct consequence of the taking of their property. It also takes into consideration the applicants' failure to use the bonds compensation scheme, which could have secured to them partial compensation in the amount of 15 to 25% of the value of the apartment, assessed in accordance with the applicable regulations. As the Court found in *Todorova and Others* (cited above, §§ 43-46), the latter fact must lead to a reduction, albeit modest, of the just satisfaction award. In addition, the Court takes into account information at its disposal about the relevant property market.

48. On the basis of the above information and consideration, the Court awards to the applicants jointly EUR 97,000 in respect of damage.

B. Costs and expenses

49. The applicants claimed 4,232.75 Bulgarian levs (BGN) (the equivalent of approximately EUR 2,200) in respect of legal fees charged by their lawyer for work on the domestic proceedings since 1992, EUR 1,620

in respect of legal fees for 27 hours of legal work on the proceedings before the Court, the equivalent of approximately EUR 170 for translation, EUR 310 for the cost of two expert reports on the value of the property at issue and EUR 30 for postal expenses. The total amount claimed in respect of costs was thus EUR 4,330. The applicants submitted copies of legal fees agreements between them and their legal representative, a time sheet, invoices and receipts.

50. The applicants also expressed their preference as to the method of payment and repartition of the sums to be awarded in respect of legal fees related to the Strasbourg proceedings. They informed the Court that they had already paid to their lawyer BGN 400 (the equivalent of approximately EUR 205) towards those fees and on that basis requested that EUR 1,500 be paid directly into the bank account of the applicants' representative and BGN 400 into the applicants' bank account.

51. The Government considered that the sums to be awarded for costs and expenses should be the same as those awarded in other similar cases.

52. 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 were reasonable as to quantum.

53. In the present case, the Court considers that the applicants' claims are well founded but considers that a slight reduction is appropriate in respect of legal fees claimed for the Strasbourg proceedings on account of the fact that the applicants' representative acted for several applicants in similar cases the issues in which overlapped (see *Velikovi and Others*, cited above, §§ 53 and 271).

54. Regard being had to the information in its possession and the relevant criteria (see paragraph 52 above), the Court awards EUR 1,200 in respect of legal fees for the Strasbourg proceedings. Having regard to the applicants' request, part of this sum – BGN 400 (the equivalent of approximately EUR 205), should be paid into the applicants' bank account and the remainder, EUR 995, into the bank account of their legal representative.

55. As regards all other costs and expenses, the Court awards EUR 2,710. The total award in respect of costs in expenses is thus EUR 3,910.

C. Default interest

56. 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 the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 97,000 (ninety seven thousand euros), plus any tax that may be chargeable, in respect of damage and EUR 3,910 (three thousand nine hundred and ten euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, both amounts to be converted into Bulgarian levs at the rate applicable at the date of settlement;
   (b) that part of the sum awarded in respect of costs and expenses, namely EUR 995 (nine hundred and ninety five euros) be paid directly into the bank account of the applicants' representative;
   (c) 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 26 February 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President