



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

FIFTH SECTION

CASE OF DICHEV v. BULGARIA

(Application no. 1355/04)

JUDGMENT

STRASBOURG

27 January 2011

FINAL

20/06/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Dichev v. Bulgaria,

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

Peer Lorenzen, *President*,
Karel Jungwiert,
Mark Villiger,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva,
Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 6 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 1355/04) 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, Mr Tsvetan Ivanov Dichev (“the applicant”), on 27 December 2003.

2. The applicant was represented by Ms S. Vasileva-Georgieva, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agent, Ms S. Atanasova, of the Ministry of Justice.

3. The applicant alleged, in particular, that for a number of years he had been unable to obtain the delivery of a garage due to him as compensation under an expropriation order issued in 1979.

4. On 3 September 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 of the Convention, as worded before 1 June 2010).

THE FACTS**I. THE CIRCUMSTANCES OF THE CASE**

5. The applicant was born in 1935 and lives in Sofia. He was one of the three co-owners of a house with a yard and a garage located there.

6. On 24 July 1979 the mayor of Sofia decided to expropriate the house and the garage with a view to the construction of several residential

buildings. His order was based on section 98(1) of the 1973 Territorial and Urban Planning Act (“the 1973 Act” – see paragraph 20 below), and said that the applicant was to be compensated with a flat and a garage in a building which the Ministry of the Interior intended to construct.

7. The expropriated properties were valued at 14,639.07 old Bulgarian leva (BGL)¹. Following judicial review proceedings brought by the applicant and the other co-owners, on 16 November 1981 the Sofia City Court increased the valuation to BGL 30,004.65.

8. In the meantime, by a supplementary order of 2 July 1980 based on section 100 of the 1973 Act (see paragraph 20 below), the mayor indicated the exact flat to be given to the applicant by way of compensation, specifying the building in which it would be located and its exact size and price.

9. The flat was built and delivered to the applicant in 1984.

10. In 1987 the applicant was informed that he had not been compensated with a garage because there were none in the building where the flat was located. It was confirmed that he would be offered a garage as soon as the Ministry of the Interior constructed a building with garages.

11. On 21 January 1999 the deputy mayor of Sofia invited the Ministry to provide a garage for the applicant. In a letter of 3 February 1999 the Ministry replied that it could not satisfy the applicant's request because its buildings had no garages.

12. On 29 December 1999 the applicant requested the municipality to compensate him with another garage, or to make a new valuation of the expropriated garage, based on its current market price, and compensate him with cash on the basis of that new valuation. On 13 July 2000 the deputy mayor asked a municipal company to carry out a fresh valuation of the garage. In a report of August 2000 three experts employed by that company valued it at 14,867 new Bulgarian leva (BGN). However, the municipality did not act on that report and did not compensate the applicant with cash.

13. On 22 November 2000 the applicant requested to be compensated in cash on the basis of the fresh valuation. The municipality did not reply.

14. On 27 December 2000 the applicant sought judicial review. He referred to his request of 29 December 1999 and enclosed a copy of it, but did not mention the request that he had made on 22 November 2000.

15. In a judgment of 13 November 2001 the Sofia City Court examined the application on the merits and dismissed it, holding that at the time when the applicant had requested a fresh valuation – 29 December 1999 – there had been no legal basis to allow such a request.

16. The applicant appealed. The Supreme Administrative Court heard the appeal on 26 March 2002. At the hearing counsel for the municipality

1. On 5 July 1999 the Bulgarian lev was revalued. One new Bulgarian lev (BGN) equals 1,000 old Bulgarian leva (BGL).

argued that the Sofia City Court's judgment was correct, and that at the time when the applicant had made his request there had been no legal basis for requesting a fresh valuation. The public prosecutor who took part in the proceedings *ex officio* submitted that the application for judicial review had been made out of time and should not have been examined on the merits.

17. On 22 April 2002 the Supreme Administrative Court quashed the Sofia City Court's judgment and declared the application for judicial review inadmissible (реш. № 3957 от 22 април 2002 г. по адм. д. № 858/2002 г., ВАС, II о.). It found that the application, as evident from its text, had been directed against a tacit refusal to grant the request of 29 December 1999, not against a tacit refusal to grant the request of 22 November 2000. It had therefore been made out of time. Under the rules of administrative procedure, the municipality should have replied to the request within one month. Its failure to do so, which had amounted to a tacit refusal, could have been challenged by way of judicial review not later than two weeks after the expiry of that one month. The application had been lodged long after that, on 27 December 2000. The Sofia City Court should therefore not have examined it on the merits.

18. In judgments of 27 March and 29 October 2003 (реш. № 2951 от 27 март 2003 г. по адм. д. № 7460/2002 г., ВАС, петчленен състав, реш. № 9625 от 29 октомври 2003 г. по адм. д. № 5877/2003 г., ВАС, петчленен състав) the Supreme Administrative Court rejected two requests by the applicant for the proceedings to be reopened.

19. Meanwhile, on 7 May 2002 the applicant urged the municipality to provide him the requested cash compensation. In a letter of 3 June 2002 the deputy mayor, referring to the judicial review proceedings, informed the applicant that the mayor had still not issued a decision providing that he be compensated in cash.

II. RELEVANT DOMESTIC LAW

20. A summary of the relevant domestic law may be found in paragraphs 72-79 of the Court's judgment in *Kirilova and Others v. Bulgaria* (nos. 42908/98, 44038/98, 44816/98 and 7319/02, 9 June 2005).

THE LAW

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

21. The applicant complained that for a number of years he had been unable to obtain compensation in respect of the garage expropriated in 1979. He relied on Article 1 of Protocol No. 1, which provides 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.”

A. The parties' submissions

22. The Government submitted that this case differed from *Kirilova and Others* (cited above), because the applicant had received the flat due under the expropriation order in good time, and had not received only the attendant garage, which was only a small part of the compensation due for his expropriated property. Moreover, the delay in the delivery of the garage had been due not so much to the authorities' inability to provide it, but to the incompetent manner in which the applicant had sought to vindicate his rights. He had not made a request for a new valuation until 1999 and had even then failed to make it in proper form. That had doubtlessly contributed to the municipality's failure to satisfy his request. His ensuing application for judicial review and appeal had been unclear and incompetently drafted. He had then repeatedly sought reopening, which was clearly not a suitable avenue of redress. He had thus delayed the compensation proceedings by at least three years. Nevertheless, those proceedings were not over, and at their close he would receive compensation in cash.

23. The applicant submitted that the Government were impermissibly mixing the flat and the garage, which were separate properties. He had indeed received the flat, but not the garage, which was still due to him. In his view, he had made proper use of the available procedures to obtain redress for the authorities' longstanding failure to deliver the garage, whereas the authorities had for a number of years tried to hinder his efforts in that respect.

B. The Court's assessment

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

25. On the merits, the Court starts by noting that the case does not concern the flat due to the applicant under the 1979 and 1980 expropriation and compensation orders (see paragraphs 6 and 8 above). That flat was built and delivered to him in 1984 (see paragraph 9 above), long before the Protocol No. 1 came into force in respect of Bulgaria on 7 September 1992 and before the applicant lodged his application in 2003. Nor is the Court competent *ratione temporis* to examine questions related to the taking of the applicant's property in 1979 or to the sufficiency of the compensation awarded at that time (see *Kirilova and Others*, cited above, §§ 86 and 105).

26. However, the garage due to the applicant under the 1979 order (see paragraph 6 above) has apparently still not been built and delivered. That order created an entitlement which qualifies as a “possession”, and the authorities' failure to satisfy it until this day amounts to a continuous situation which falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No. 1 (*ibid.*, §§ 86, 104 and 105).

27. To ascertain whether the Bulgarian State has complied with its obligations under that provision, the Court must examine whether it struck a fair balance between the general interest and the applicant's rights (*ibid.*, § 106). Very long delays in the payment of compensation, coupled with the authorities' unwillingness to resolve the problem, are factors, among others, that can upset that balance (*ibid.*, § 123).

28. The applicant's entitlement arose thirty-one years ago, eighteen of which fall within the Court's temporal jurisdiction. Such a long period appears clearly unjustified. Throughout that time the applicant was faced with the passive attitude of the authorities, which left him in a position of uncertainty as to whether or when he would receive the compensation to which he was entitled.

29. Contrary to what has been suggested by the Government, the Court finds no indication that the applicant was responsible for that delay. Firstly, he cannot be blamed for not trying earlier to request compensation on the basis of a fresh valuation based on the current market value of the garage. In view of the way in which the authorities and the courts interpreted the applicable rules at the time, he could have reasonably assumed that he would be unlikely to obtain it (*ibid.*, § 115). Moreover, when the Sofia City Court examined the applicant's case on the merits, it held that there had been no legal basis for even requesting a fresh valuation; on appeal, counsel for the municipality maintained the same position (see paragraphs 15 and 16 above). In those circumstances, the applicant could have legitimately doubted whether the authorities ascribed any effect to the valuation carried

out in August 2000 (see paragraph 12 above). Secondly, it does not seem that the manner in which the applicant prosecuted the judicial review proceedings contributed to the delay. Those proceedings did not prevent the authorities from finding an appropriate solution to his problem. However, they did not take any steps in that direction, and as late as June 2002 informed him that no order had been made for him to be compensated in cash (see paragraph 19 above).

30. In cases like the present one it is incumbent on the authorities to act in good time, and in an appropriate and consistent manner. Instead, they adopted a passive attitude, leaving the applicant in a state of uncertainty as to whether or when he would receive the compensation to which he was entitled and opposing his attempts to seek redress. That approach cannot be considered compatible with the State's obligations under Article 1 of Protocol No. 1 (*ibid.*, §§ 121 and 123).

31. There has therefore been a violation of that provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

A. The examination of the application for judicial review

32. The applicant complained that by declaring his application for judicial review inadmissible the Supreme Administrative Court had deprived him of effective access to a court.

33. The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention. It notes that when lodging his application for judicial review on 27 December 2000 the applicant referred to the request that he had made in 29 December 1999 and enclosed a copy of it, but did not mention the request that he had made on 22 November 2000 (see paragraph 14 above). The ensuing rejection of his application as being out of time can therefore be attributed to his own lack of diligence (see, *mutatis mutandis*, *Edificaciones March Gallego S.A. v. Spain*, 19 February 1998, § 35, *Reports of Judgments and Decisions* 1998-I). To accomplish their task, the courts need the cooperation of the parties, who are required, as far as possible, to set out their claims clearly, unambiguously and in a reasonably structured form (see *Jahnke and Lenoble v. France* (dec.), no. 40490/98, ECHR 2000-IX).

34. It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. The requests for reopening of the judicial review proceedings

35. The applicant also complained that his applications for reopening of the judicial review proceedings had been wrongfully rejected.

36. The Court observes that according to its case-law, Article 6 does not guarantee a right to the reopening of proceedings and is not applicable to proceedings concerning requests for the reopening of proceedings which have been concluded by a final decision (see, among other authorities, *Zawadzki v. Poland* (dec.), no. 34158/96, 6 July 1999; *Sablon v. Belgium*, no. 36445/97, § 86, 10 April 2001; and *Zotov v. Bulgaria* (dec.), no. 43273/98, 6 March 2003).

37. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. 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

39. The applicant claimed 20,460 euros (EUR) in respect of the pecuniary damage resulting from the authorities' continuing failure to deliver the garage to him. That amount was based on the market value that the expropriated garage would have had in 2009. He further claimed EUR 54,000 resulting from the impossibility to let the garage since 1979. That amount was based on the current rental prices for similar garages in Sofia. Lastly, the applicant claimed compensation in respect of the non-pecuniary damage, asking the Court to determine the quantum of the award at its discretion.

40. The Government submitted that the applicant's claim in respect of pecuniary damage was exorbitant. In their view, the finding of a violation would constitute sufficient reparation for any damage suffered. The claim in respect of loss of profits was speculative and unfounded. Throughout the years the rental prices for garages like the one taken from the applicant had varied widely, and it was completely unrealistic to assume that the applicant would have been able to obtain current rental prices throughout the past thirty years. Lastly, they pointed out that the economic crisis had caused the prices of immovable properties in Bulgaria to drop drastically.

41. The Court finds it appropriate to adopt the same approach as in *Kirilova and Others v. Bulgaria* ((just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 23-33, 14 June 2007).

42. As regards the damage stemming from the authorities' continuing failure to deliver the garage due to the applicant under the order of 24 July 1979 (see paragraph 6 above), the Court considers that the best way to make good the breach of Article 1 of Protocol No. 1 would be for the respondent State to deliver to the applicant ownership and possession of that garage. If the respondent State does not make such delivery within three months from the date on which this judgment becomes final, it must pay the applicant a sum corresponding to the current value of the garage. Having regard to the materials submitted by the applicant and information available to it on the prices of real property in Sofia, the Court assesses that value at EUR 12,000.

43. Concerning the damage sustained on account of the impossibility to use and enjoy the garage since 1979, the Court is unable to follow the method suggested by the applicant, for several reasons. First, the "period of damage" did not start in 1979, but on 7 September 1992, when Protocol No. 1 came into force in respect of Bulgaria. Secondly, it is unclear whether the applicant would have let the garage out or used it himself. Thirdly, the applicant would have inevitably experienced some delays in finding suitable tenants, would have incurred expenses to maintain the garage, and would have been subject to taxation on any rent (*ibid.*, §§ 30 and 31). Fourthly, in view of the economic realities in Bulgaria, it is unrealistic to assume that rent throughout the period since 7 September 1992 would have been equal to that charged at present (see, *mutatis mutandis*, *Zlinsat, spol. s r.o. v. Bulgaria* (just satisfaction), no. 57785/00, § 44 (c), 10 January 2008). The applicant may nonetheless be regarded as having suffered a certain loss of opportunity on account of not being able to use and enjoy the garage. Having regard to the number of imponderables involved, the Court considers that it must rule in equity. It awards the applicant EUR 4,000, plus any tax that may be chargeable.

44. The Court further considers that the applicant must have experienced frustration as a result of the authorities' prolonged failure to deliver the garage to which he was entitled and of their reluctance to solve his problem for such a long time. Ruling in equity, the Court awards him EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

45. The applicant sought reimbursement of EUR 1,000 incurred in lawyers' fees for the proceedings before the Court and EUR 28 for other expenses, such as postage and court fees for the domestic proceedings. He submitted receipts for payment of court fees and postal expenses.

46. The Government pointed out that there was no indication that the applicant had paid for the services of a lawyer. His claim in that respect was therefore unfounded.

47. According to the Court's case-law, applicants are entitled to the reimbursement of their 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. To that end, Rule 60 §§ 2 and 3 of the Rules of Court provide that applicants must enclose with their claims for just satisfaction “any relevant supporting documents”, failing which the Court “may reject the claims in whole or in part”. In the present case, the applicant has not enclosed with his claim any documents showing that he has incurred lawyers' fees. Therefore, his claim in that respect cannot be allowed. On the other hand, noting that costs incurred to prevent or obtain redress for a violation of the Convention through the domestic legal order are recoverable under Article 41 (see, as a recent authority, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 159, 6 July 2010), the Court allows the applicant's claim in respect of the court fees paid by him for the domestic proceedings. The claim in respect of postage is also well-founded. It therefore awards the applicant EUR 28, plus any tax that may be chargeable.

C. Default interest

48. 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 complaint concerning the authorities' failure to provide to the applicant the compensation to which he was entitled admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds* that the respondent State is to deliver to the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, ownership and possession of the garage that is due to him;
4. *Holds*
 - (a) that, failing such delivery, the respondent State is to pay the applicant, within the same period of three months, EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, to be converted into Bulgarian leva at the rate applicable on 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. *Holds*

(a) that the respondent State is to pay the applicant, within three months of 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 leva at the rate applicable on the date of settlement:

(i) EUR 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 28 (twenty-eight euros), plus any tax that may be chargeable, 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;

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

Done in English, and notified in writing on 27 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President