



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

FOURTH SECTION

CASE OF DECHEVA AND OTHERS v. BULGARIA

(Application no. 43071/06)

JUDGMENT

STRASBOURG

26 June 2012

FINAL

26/09/2012

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

In the case of Decheva and Others v. Bulgaria,

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

Lech Garlicki, *President*,
David Thór Björgvinsson,
Päivi Hirvelä,
Ledi Bianku,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges*,
Pavlina Panova, *ad hoc judge*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 5 June 2012,

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

PROCEDURE

1. The case originated in an application (no. 43071/06) 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 Glikeria (Ganka) Decheva, Ms Antoaneta Todorova Georgieva and Mrs Maria Todorova Marinova (“the applicants”), on 10 October 2006.

2. The applicants were represented by Mrs A. Gavrilova-Ancheva, a lawyer practising in Sofia. The Bulgarian Government (“the Government”) were represented by their Agents, Mrs N. Nikolova, Mrs M. Dimova and Mr V. Obretenov, of the Ministry of Justice.

3. The applicants alleged that the domestic courts, in breach of the principle of legal certainty, re-examined the question whether they were entitled to restitution of buildings constructed on a plot of land, a matter which had already been decided by a final judgment in their favour. They further alleged that they had been deprived of their possessions as a result of the above events.

4. On 13 July 2010 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. The application was later transferred to the Fourth Section of the Court, following the re-composition of the Court’s Sections on 1 February 2011.

6. On 16 June 2008 Zdravka Kalaydjieva, the judge elected in respect of the Republic of Bulgaria, withdrew from sitting in the case. On 2 February 2012 the President of the Fourth Section appointed

Pavlina Panova as an *ad hoc* judge from the list of three persons whom Bulgaria had designated as eligible to serve as such judges (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The first applicant was born in 1919 and lived in Sliven. The second and third applicants were born in 1937 and 1943 respectively and live in Sofia. On 30 September 2007 the first applicant died. On 3 February 2011 the second and third applicants who are the first applicant's nieces and her only heirs expressed their wish to continue the proceedings before the Court on the first applicant's behalf.

A. Expropriation of the property

8. The applicants' ancestors owned a plot of land with three buildings constructed on it - a house, a summer kitchen and a storage building - in the village of Zheravna. The houses in the village are examples of traditional Bulgarian architecture and the village itself was declared an architectural reserve in 1964.

9. In 1968 the plot and the buildings were expropriated for the needs of the State Tourist Agency. The applicants received pecuniary compensation.

B. Restitution of the property

10. On 20 April 1992, following the entry into force of the 1992 Law (see relevant domestic law and practice below), the applicants made a request to the Mayor of Kotel for the restitution of the entire property, including the buildings. No response was received and on an unspecified date in 1993 the applicants appealed against the mayor's tacit refusal to the Sliven Regional Court.

11. In a judgment of 25 May 1993 the Regional Court rejected the appeal, finding that the property had been used for the purposes of the expropriation and therefore it was not subject to restitution. The applicants lodged a petition for review (cassation).

12. In a final judgment of 28 March 1995 the Supreme Court held that the expropriation had been carried out under the building and planning legislation for the needs of the State Tourist Agency. It concluded that the conditions for restitution had been met since, as provided for by

section 1 (1) of the 1992 Law (see paragraph 28 below), the construction project in view of which the properties were expropriated had not been carried out. Furthermore, even assuming that section 3 (1) of the 1992 Law was applicable, the court held that the condition for revoking the expropriation foreseen by that provision was also met in so far as the buildings were not used for the purposes for which they were expropriated. On these grounds it revoked the expropriation and restored the ownership of the property including the buildings on it to the applicants.

13. On an unspecified date after October 1996 the Chairman of the Supreme Administrative Court lodged an application for the re-opening of the proceedings (at the end of 1996 the Supreme Court was divided into a Supreme Court of Cassation and a Supreme Administrative Court). He relied on a plan of the applicants' plot issued by the Kotel municipality in October 1996, arguing that it constituted newly discovered evidence. On 10 May 1997 a five-member panel of the Supreme Administrative Court refused to re-open the case. The court found that the evidence relied upon was not newly discovered but had been issued by the Kotel municipality, which had been a party to the proceedings from their outset.

14. Meanwhile, on 5 July 1996 the Mayor of Kotel, noting that the applicants had returned the compensation received by them, ordered that their properties be struck out of the State Property Register.

15. After certain obstructions by the municipal administration and judicial proceedings in that respect, the applicants managed to obtain all the documentation necessary for acquiring a notary deed and obtained such on 7 December 1998. It related to both the land restored to the applicants and the buildings constructed on it.

16. From that moment on the applicants paid property tax for the land and the buildings. Apparently, they did not take possession of the plot and the buildings.

C. The declaratory action against the applicants and subsequent developments

17. On an unspecified date in 1999 the Kotel municipality brought an action against the applicants seeking a declaration that it was the owner of the buildings restored to them. The municipality asserted that its ownership rights stemmed from an act issued on 12 October 1998 which had declared the impugned buildings to be municipal property.

18. The applicants objected, claiming, *inter alia*, that the ownership issue had already been determined with *res judicata* effect by virtue of the final judgment of 28 March 1995. In a decision of 11 March 2000 the Kotel District Court dismissed this objection holding that the 1995 judgment did not have *res judicata* effect since it had been given in administrative proceedings and not in the course of ordinary civil proceedings where the

parties could enjoy equality of arms. In a judgment of 13 March 2000 the Sliven Regional Court upheld the action, finding that the old buildings had been demolished and new ones had been erected in their place in 1982. Since the applicants could not establish ownership of the newly constructed buildings as of 1982, the court concluded that title to them could not be restored.

19. On appeal, in a judgment of 6 October 2000, the Burgas Court of Appeal discontinued the proceedings as it found that the issue had already been determined with *res judicata* effect in the 1995 final judgment. The court found that both sets of proceedings had had the same subject matter. Further, the Kotel municipality had already exhausted the only remedy available to it – to lodge an application for re-opening of the administrative proceedings.

20. The Kotel municipality appealed further. In a judgment of 19 April 2002 the Supreme Court of Cassation quashed the lower court's judgment and remitted the case for fresh examination holding that the municipality was not bound by the *res judicata* effect of the 1995 judgment. It reasoned that the material scope of the declaratory proceedings had not been identical to that of the administrative proceedings which had ended with the 1995 judgment and that it had been the mayor, in exercise of his authority to decide on restitution claims, who had been a party to them. However, the Kotel municipality, which was vested with the municipal property rights and had authority to dispose of municipal property such as the one at issue, was a separate legal entity different from the mayor and had not taken part in the administrative proceedings which had ended with the 1995 judgment.

21. Following the remittal, in a judgment of 4 February 2003 the Burgas Court of Appeal also held that the Kotel municipality was not bound by the *res judicata* effect of the 1995 judgment. It further held that the applicants' property had been expropriated under section 101 of the Property Act and section 3 of the 1992 Law was therefore applicable (see paragraph 27 below). In that case, the court reasoned, the salient issue was not whether the expropriated buildings had been pulled down but rather whether the property had been used for the purposes for which it had been expropriated. The Court of Appeal held that this was not so as the buildings had not been used by the State Tourist Agency. Therefore, it quashed the Sliven Regional Court judgment and rejected the Kotel municipality's claim.

22. The municipality appealed. In a judgment of 27 January 2004 the Supreme Court of Cassation quashed the lower court's judgment and found against the applicants. It re-examined the issue whether the applicants had had a right to restitution, holding that the final judgment of 1995 was not binding on the Supreme Court of Cassation which had the right to exercise indirect control over it in the declaratory proceedings.

23. On an unspecified date the applicants requested the re-opening of the proceedings submitting new evidence – an expropriation order of the Council of Ministers of 1968, stating that a number of expropriated houses, including the applicants', had to be, *inter alia*, restored, adapted and preserved as cultural monuments. On 21 December 2004 the Supreme Court of Cassation granted the request for re-opening holding that the order was of importance for the determination of the dispute as it could cast light on the legal grounds for the expropriation, and hence on the question whether the buildings had been rebuilt or not. It also found procedural violations in respect of the summoning of the applicants and remitted the case for fresh examination by a different panel of the Supreme Court of Cassation.

24. In a final judgment of 11 April 2006 the Supreme Court of Cassation granted the Kotel municipality's claim, declaring it the owner of the buildings in question and revoking the applicants' notary deed of 1998 in that respect. Relying on the Council of Ministers' order of 1968, it held that the property had been expropriated under section 101 of the Property Act. Therefore, it could be restored to the applicants only if the buildings were still standing and if the property was not used for the expropriation purposes. Relying on expert reports, the court established that the "adaptation, restoration and conservation" of the old buildings in fact constituted a new construction. Thus, the preconditions for restitution had not been met.

25. In respect of the *res judicata* effect the court, referring to its judgment of 19 April 2002 (see paragraph 20 above), held that the proceedings which had ended with the judgment of 28 March 1995 were administrative and their subject matter had not been an ownership dispute. The municipality had been a third party to these proceedings as it had not taken part in them. The declaratory proceedings were civil and the municipality, being vested with the municipal property rights, was a party to them, whereas the mayor was merely its representative. Therefore, the municipality was not bound by the *res judicata* effect of the 1995 judgment in respect of the ownership dispute.

26. It appears from a document issued by the Kotel Land Registry Service that on an unspecified date not later than September 2007 the applicants transferred the ownership of their plot of land to an individual called T. V., who sold it to his brother - P. V., in September 2007. In October 2007 the Kotel municipality sold, *inter alia*, the buildings which were the subject of the final judgment of 11 April 2006 to P. V. for an unspecified price. The applicants thus disposed only of the land which had been restored to them since pursuant to the 11 April 2006 judgment they were no longer owners of the buildings constructed on it.

27. Further, according to a publication in the Bulgarian media dated 18 February 2008 two of the three buildings were destroyed by a fire earlier that month.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Restitution of private property expropriated for public use

28. 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, ЗПИИМ, ЗБНМ, ЗДИ и ЗС*, “the 1992 Law”) which provided for the restitution of expropriated property where specific conditions were met.

29. Section 1 of the Act provided that individuals (or their heirs) whose constructed properties had been expropriated before 21 April 1990 under several pieces of legislation could request the revocation of the expropriation if the buildings were still standing and the project in view of which they had been expropriated had not started. Where the buildings had been demolished, revocation of the expropriation could be requested if a new construction had not yet started and the land could form an independent plot in accordance with the relevant legislation (section 1(2)).

30. Section 3(1) provided that the individuals whose properties had been expropriated under two other pieces of legislation, namely section 26 of the State Property Act or section 101 of the Property Act, could request revocation of the expropriation if upon entry into force of the 1992 Law the property was not being used for the purposes for which it had been expropriated.

31. The request for revocation of the expropriation had to be lodged with the mayor of the municipality whose refusal (express or tacit) could be appealed against to the Regional Court. The court had to decide on the merits of the request (section 4). Pursuant to section 6 (1) the expropriated owner had to return any compensation received in order for the revocation of the expropriation to take effect.

B. *Res judicata* effect and binding character of the judgments under Bulgarian civil procedure law

32. The relevant procedure and practice in respect of the *res judicata* effect and the binding character of judgments under Bulgarian civil law procedure have been summarised in the Court’s judgments in the cases of *Kehaya and Others v. Bulgaria* (nos. 47797/99 and 68698/01, §§ 51-54, 12 January 2006) and *Sivova and Koleva v. Bulgaria* (no. 30383/03, §§ 57-60, 15 November 2011).

THE LAW

I. PRELIMINARY OBSERVATION

33. The first applicant died on 30 September 2007, while the case was pending before the Court (see paragraph 7 above). It has not been disputed by the Government that her nieces, the second and third applicants, are entitled to pursue the application on her behalf as well as in their own names and the Court sees no reason to hold otherwise (see *Văcăruș v. Romania*, no. 1012/02, § 61, 4 November 2008).

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

34. The applicants complained that the declaratory proceedings were unfair in that the domestic courts had disregarded the *res judicata* effect of the final judgment of 1995 in so far as it concerned the buildings constructed on their plot of land and, in violation of the principles of legal certainty and the rule of law, re-examined the question of their entitlement to restitution over them. They relied on Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

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

B. Merits

1. *The parties' submissions*

36. The Government stated that the present case differed from *Kehaya and Others*, cited above, in that in the case at hand the *res judicata* effect of the 1995 final judgment rendered in the restitution proceedings did not extend to the declaratory proceedings brought against the applicants because the two sets of proceedings had had a different subject matter and different parties. They referred to the domestic courts' findings in that respect. In addition, in the present case the protection of the interests of

third parties, the Kotel municipality being such, warranted the re-examination of the case.

37. The applicants argued that, like in *Kehaya and Others*, both sets of proceedings determined the property rights of the same legal subjects – the municipality and the applicants. While admittedly the Kotel municipality had not been directly bound by the judgment of 28 March 1995, the Mayor of Kotel had participated in both sets of proceedings, albeit exercising different public functions, and had had the opportunity to raise in the restitution proceedings the arguments relied on later by the municipality in the declaratory proceedings. Furthermore, the Supreme Administrative Court in its judgment of 10 May 1997 refusing to re-open the restitution proceedings held that the Kotel municipality had been a party to those proceedings.

2. The Court's assessment

38. The Court reiterates that the right to a fair hearing under Article 6 § 1 of the Convention, interpreted in the light of the principles of the rule of law and legal certainty, encompasses the requirement that where the courts have finally determined an issue, their ruling should not be called into question (see *Sivova and Koleva*, cited above, § 66; *Kehaya and Others*, cited above, § 61).

39. In *Kehaya and Others*, a final judgment restoring the applicants' property rights over a plot of land was rendered devoid of any legal effect because in separate proceedings the question whether the State or the applicants were the owners of the same land was re-examined and decided differently. In these circumstances, the Court found that the State had been provided a "second chance" to obtain a re-examination of a dispute already determined by a final judgment in a previous set of proceedings to which a different emanation of the State had been a party. The Court went on to find a violation of Article 6 § 1 of the Convention on the ground that by depriving a final judgment in the applicants' favour of any legal effect the authorities had acted in breach of the legal certainty principle inherent in that Convention provision.

40. In the present case, the 1995 final judgment restoring the applicants' property rights was rendered devoid of any legal effect in so far as it concerned the ownership of three buildings constructed on their plot of land, since in the declaratory proceedings which ended in 2006 that matter was re-examined and decided differently.

41. The domestic courts in the declaratory proceedings considered that a re-examination was permissible because the Kotel municipality had not taken part in the first set of proceedings and because the subject matter of the two sets of proceedings had been different (see paragraph 25 above).

42. The Court notes however that both sets of proceedings dealt with the question whether the conditions for restoring the buildings to the applicants

had been met (see paragraphs 12 and 24 above). Admittedly the Mayor of Kotel and the Kotel municipality exercised different functions in respect of municipal property and the question of restitution (see paragraphs 20 and 25 above). That does not alter however the fact that they were different emanations of the local public authorities and in that sense of the State (see, *a contrario*, *Sivova and Koleva*, cited above, §§ 72-73).

43. Thus, like in *Kehaya and Others*, the approach adopted by the Supreme Court of Cassation in its judgment of 11 April 2006 provided the Kotel municipality, a public authority, with a “second chance” to assert its property rights. It is to be noted that the domestic courts had also established that there were no grounds for the re-opening of the proceedings which ended with the final judgment of 28 March 1995 (see paragraph 13 above).

44. The foregoing considerations are sufficient to enable the Court to conclude that the principle of legal certainty was infringed in that the issues determined by the final judgment rendered in the applicants’ favour on 28 March 1995 were re-examined and decided differently.

45. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

46. The applicants complained that they had been deprived of their possessions in breach of 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. Admissibility

47. The Government contended that the applicants had failed to exhaust domestic remedies. In particular, it was open to them to request compensation under the Law on Compensation for Owners of Nationalised Real Property (“the Compensation Law”). In addition, they could seek damages by bringing an action under the 1988 State and Municipalities’ Responsibility for Damage Act (“the 1988 Act”).

48. The applicants stated that both pieces of legislation referred to by the Government did not apply in their case.

49. The Court observes that the Compensation Law provides compensation for properties which could not be restored pursuant to the provisions of the Law on the Restitution of Ownership of Nationalised Real Property. The applicants' property was not however restored pursuant to that law and the compensation envisaged in the Compensation Law was therefore not pertinent to their case. Further, the Government have not presented any case-law of the domestic courts to support the assertion that an action under the 1988 Act was an effective remedy for the applicants in the circumstances of the present case.

50. It follows that the Government's objection of non-exhaustion of domestic remedies in respect of the applicants' complaint under Article 1 of Protocol No. 1 must be dismissed. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

51. The Government stated that the applicants' rights under Article 1 of Protocol No. 1 to the Convention had not been infringed and pointed out that they had not taken possession of the restored buildings. In addition, the interference with their rights had been lawful, carried out in the "public interest" and proportionate.

52. The applicants maintained that the domestic courts had re-examined the question of the ownership of the buildings restored to them by virtue of the 1995 final judgment. Even if they have been unable to take possession of the restored buildings they had a "possession" or at least a "legitimate expectation" in the sense of Article 1 of Protocol No. 1 to the Convention. They further averred that the interference with their rights had been unlawful in that the 1995 final judgment had been rendered devoid of legal effect. In any event, the interference had been disproportionate.

2. The Court's assessment

53. The Court observes at the outset that the judgment of 11 April 2006 did not concern, and the applicants raise no complaint in that respect, the plot of land restored to them in 1995 but only the three buildings constructed on it. The Court will therefore limit its examination to the question whether the applicants' rights under Article 1 of Protocol No. 1 over those buildings had been violated.

54. The applicants' ownership of the buildings was restored by the final judgment of 28 March 1995. While they never entered into possession of the restored buildings, on 7 December 1998 they obtained a notary deed for the properties (see paragraphs 15 and 16 above). Against this background, the Court finds that the applicants had "possessions" within the meaning of Article 1 of Protocol No. 1.

55. The judgment of 11 April 2006 undoubtedly constituted an interference with the applicants' rights guaranteed by Article 1 of Protocol No. 1 in that the ownership of the buildings previously restored to them was returned to the Kotel municipality, a local public body, following proceedings instituted by it.

56. As to the nature of the interference, the Court, noting that the applicants never entered into possession of the restored buildings, considers that it may not be necessary to decide whether the interference was a deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (contrast with *Kehaya and Others*, cited above, § 74), since that rule is only concerned with a particular instance of interference with the right to peaceful enjoyment of property and must, accordingly, be construed in the light of the principle enunciated in the first sentence of the first paragraph. The Court therefore takes the view that it should examine the interference in the light of the first sentence of the first paragraph of Article 1 of Protocol No. 1.

57. In the present case, like in *Kehaya and Others* (cited above, § 76), the Court has found that the authorities acted in breach of the legal certainty principle inherent in Article 6 § 1 of the Convention (see paragraphs 44 and 45 above). In *Kehaya and Others* it concluded that the interference could not in consequence be deemed lawful in the sense of the Convention, not least because of the fundamental nature in a democratic society of the principle of rule of law of which the legal certainty principle forms part and which is inherent in all the Articles of the Convention (*ibid.*, §§ 76-77). The Court sees no reason to reach a different conclusion on the facts of the instant case. The present case does not concern re-opening of civil proceedings, within time-limits and under conditions regulated by law, but a failure to recognise the *res judicata* effect of a final judgment delivered in contentious proceedings. It cannot be considered that a public interest overriding the fundamental principle of legal certainty and the applicants' rights justified a re-examination of the dispute and the consequential unlawful interference with their possessions (*ibid.*, § 76 *in fine*).

58. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

59. Lastly, the applicants complained under Article 6 § 1 of the Convention that they were denied a fair trial in that the Supreme Court of Cassation in the judgment of 11 April 2006 did not examine all relevant matters and all arguments raised by them which rendered the judgment insufficiently reasoned.

60. The Court has examined the complaint as submitted by the applicants. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

61. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

62. 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

63. In respect of pecuniary damage the applicants considered that they should be awarded the current market value of the buildings but reflecting “their state at the time of expropriation” without taking into account the damage or improvements to the premises which had taken place after that. They claimed 67,487 euros (EUR) in that respect. They also sought compensation for the loss of rental income from the buildings for the period from January 1997 until January 2011. They claimed EUR 35,954 in that respect.

64. In support of their claims the applicants presented a valuation report prepared by an expert commissioned by them. The expert had visited the site and stated that he relied on photographs in valuing two of the buildings which had burnt down. In addition, the valuation report took into consideration the fact that the buildings were located in an architectural reserve in the Balkan Mountains, off the road connecting the capital Sofia

with the Black Sea coast. Further, the expert referred to two recent real estate transactions carried out in the village of Zheravna (without providing details of these transactions) in determining the current market value of the properties. Again without providing further detail, the expert stated that the rental income for the period from March 1995 until January 2011 was determined following a study of the rental market in the village.

65. The Government contested these claims as excessive.

66. According to the Court's settled case-law, a judgment in which it finds a violation of the Convention imposes on the respondent State a legal obligation to make reparation for its consequences in such a way as to restore as far as possible the situation existing before the breach (see, among many other authorities, *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 23, 14 June 2007; *Kehaya and Others v. Bulgaria* (just satisfaction), nos. 47797/99 and 68698/01, § 17, 14 June 2007).

67. In the present case, after the applicants' ownership of the disputed buildings had been restored by a final judgment in 1995, the matter was re-examined and decided differently in a separate set of proceedings which was deemed by the Court to have contravened Article 6 § 1 and Article 1 of Protocol No. 1 to the Convention (see paragraphs 45 and 58 above). The applicants are therefore entitled to compensation for the pecuniary damage directly related to the violation of their rights.

68. The Court, having regard to the fact that the disputed buildings are no longer owned by the State and that two of the buildings apparently were destroyed in a fire (see paragraphs 26-27 above), considers that in the circumstances of the present case the most appropriate form of redress would be the payment of a sum of money reasonably related to the value of the properties.

69. As to the determination of the exact amount the Court notes that the expert commissioned by the applicants did not include in his report any raw data showing how he arrived at his estimates, but simply stated that they were based on the current market prices. It thus considers that the report cannot be accepted as fully reliable. Further, the Court takes into account the buildings' location and the fact that two of them were not houses but service premises. Having regard to those considerations and the information about property prices available to it, the Court awards the applicants jointly EUR 35,000 in respect of the value of the property.

70. Concerning the damage sustained by the applicants on account of the loss of rent, the Court considers that approach reasonable but takes into account that they never entered into possession of the buildings at issue. It further takes the view that it cannot accept without question the expert's estimate on the market rent throughout the years. Firstly, the applicants, in the absence of market evidence to the contrary, would have inevitably experienced certain delays in finding suitable tenants and would have

incurred certain expenses to maintain the buildings. In addition, they have not shown that all buildings were habitable. Also, they would have been subjected to taxation on any revenue. Finally, the Court observes that there is no reliable information on rental prices in the village of Zheravna throughout the rental period available to it. It nevertheless considers that the applicants have undoubtedly suffered a certain loss of opportunity. Having regard to the large number of imponderables involved and the impossibility to quantify exactly this loss, the Court considers it appropriate to award the applicants jointly EUR 6,000 in that respect plus any tax that may be chargeable on this sum.

2. Non-pecuniary damage

71. In respect of non-pecuniary damage the second and third applicants sought EUR 10,000 for the stress, anxiety and uncertainty suffered by them.

72. The Government contested these claims. In their view the finding of a violation of the Convention would constitute sufficient just satisfaction for the applicants.

73. The Court considers that the applicants have suffered distress on account of the violations of their rights. Deciding on an equitable basis, it awards EUR 1,500 in respect of non-pecuniary damage to each of the two applicants (EUR 3,000 in total).

B. Costs and expenses

74. The applicants also claimed EUR 1,088 for the costs and expenses (court expenses and legal fees) incurred before the domestic courts and EUR 2,049.50 for those incurred before the Court. In support of their claim they presented a contract for legal representation at an hourly rate of EUR 70, a time sheet for twenty-six hours of legal work and a contract for preparing a valuation report as well as relevant receipts in connection with the proceedings before the domestic courts. They requested that the amount awarded by the Court in respect of the expenses incurred before it be paid directly into the bank account of their legal representative.

75. The Government contested these claims. In their view the applicants had failed to present receipts for the postal and clerical expenses allegedly incurred by them before the Court. In addition, the legal fees had been excessive.

76. 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. The Court further reiterates that legal costs are only recoverable to the extent that they relate to the violation that has been found. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of

EUR 1,000 for costs and expenses in the domestic proceedings and EUR 1,500 for the proceedings before the Court. The sum of EUR 1,500 is to be paid directly into the bank account of the applicants' legal representative.

C. Default interest

77. The Court considers it appropriate that the default interest rate 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. *Holds* that the first applicant's heirs have standing to continue the present proceedings in her stead;
2. *Declares* the complaint under Article 6 of the Convention about the alleged violation of the principle of legal certainty and the complaint under Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
5. *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, the following amounts, to be converted into Bulgarian leva at the rate applicable at the date of settlement:
 - (i) EUR 41,000 (forty one thousand euros) jointly, plus any tax that may be chargeable, in respect of pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros) to each of the second and third applicants (EUR 3,000 in total), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (iii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses. EUR 1,500 of that amount is to be paid directly into the bank account of the applicants' 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;

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

Done in English, and notified in writing on 26 June 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Lech Garlicki
President