



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

FIFTH SECTION

CASE OF MITEVA v. BULGARIA

(Application no. 60805/00)

JUDGMENT

STRASBOURG

12 February 2009

FINAL

12/05/2009

This judgment may be subject to editorial revision.

In the case of Miteva 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. 60805/00) 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 a Bulgarian national, Mrs Elena Todorova Miteva (“the applicant”), on 4 February 2000.

2. The applicant was represented by Mr D. Petrov, a lawyer practising in Varna. The Bulgarian Government (“the Government”) were represented by their Agent, Mrs M. Dimova.

3. The applicant alleged, in particular, that they had been deprived of their property in violation of Article 1 of Protocol No. 1.

4. On 9 October 2007 the Court declared the application partly inadmissible and decided to communicate the complaint concerning the alleged deprivation of property to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

5. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 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 applicant was born in 1925 and lives in Varna.

7. In 1968 the applicant and her husband purchased from the State a three-room flat of approximately 76 sq. m in Varna. The flat had become State-owned by virtue of the nationalisations carried out by the communist regime in Bulgaria in 1947 and the following years.

8. In 1993, shortly after the Restitution Law (ЗБКОИИ) was passed, the former pre-nationalisation owners brought proceedings under section 7 of that law against the applicant and her husband, seeking the nullification of their title and the restoration of the property.

9. The applicant's husband passed away in June 1996. She was his sole heir and the proceedings continued against her.

10. On 29 June 1996 the Varna District Court found that the 1968 transaction had been null and void and allowed the claim. On appeal, on 25 July 1997 the Varna Regional Court upheld the lower court's judgment. The courts found that the 1968 contract had been signed by a deputy to the mayor instead of the mayor (*председател на изпълнителния комитет на районния народен съвет*) and that the file did not contain the requisite approval by the Minister of Architecture and Building Planning. The courts also found that the price of the flat, 5,352 leva, had not been determined correctly by the administration (the judicial expert ordered by the court in the 1996 proceedings estimated the price in 1968 at 5,725 leva).

11. In 1999 the applicant requested the reopening of the proceedings, stating that she had not been duly summoned for the Regional Court's hearing held on 2 July 1997. In a judgment of 22 July 1999 the Supreme Court of Cassation rejected the request for reopening.

12. In 2000 it became possible for persons in the applicant's situation to obtain compensation from the State, in the form of bonds which could be used in privatisation tenders or sold to brokers. The applicant did not avail herself of that opportunity within the relevant three-month time-limit. She applied for bonds in June 2007 but was informed by a letter of 5 July 2007 from the Varna Regional Governor that she was not entitled to compensation in the form of bonds.

13. The applicant did not leave the property voluntarily. In 1998 the restored owners instituted enforcement proceedings. The applicant was evicted on 16 August 2006.

14. On 15 November 2006 the applicant was granted the tenancy of a two-room municipal flat in Varna.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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).

16. After January 2000, section 9 of the Compensation Law (ЗОСОИ) provided that persons who had lost their dwellings pursuant to section 7 of the Restitution Law, as well as pre-nationalisation owners whose claims under that provision were dismissed after 22 November 1998, could apply for compensation bonds within three months of January 2000 or within two months of the final judgment in their case. In June 2006 an amendment of section 7(3) of the Restitution Law enabled persons currently in possession of compensation bonds to obtain payment at face value from the Ministry of Finance. On 8 May 2007 the Government published regulations implementing that provision.

THE LAW

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

17. The applicant complained that she had been deprived of her property in violation of 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.”

18. The Government contested that argument.

A. Admissibility

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

B. Merits

20. The applicant stated that she and her husband had bought their flat in good faith and had not been responsible for the administrative omissions that had led to the nullification of their title. She maintained that no adequate compensation had been available to her for the deprivation of her property.

21. The Government stated that the restitution laws passed after the fall of communism were aimed at restoring justice. In the applicant's case, the courts had applied the relevant law correctly and declared the applicant's title null and void on account of serious violations of the law, in particular the fact that the price of the flat had not been properly determined, and argued that the applicant and her husband had in all probability been aware of these irregularities. The requisite fair balance had been struck as the applicant had been entitled to compensation in the form of bonds but had failed to submit a request in due time. Moreover, after her eviction from her flat she had been provided with a municipal dwelling.

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

23. The facts complained of undoubtedly constituted an interference with the applicant's 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.

24. The Court must examine, therefore, whether the deprivation of property at issue was lawful, was in the public interest and struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

25. The Court notes that the interference was based on the relevant law and pursued an important aim in the public interest: to restore justice and respect for the rule of law. As in *Velikovi and Others* (cited above, §§ 162-176), it 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.

26. Applying the criteria set out in *Velikovi and Others* (cited above, §§ 183-192), the Court notes that the applicant's title was declared null and void and she was deprived of her property on the ground that in 1968 a relevant document had been signed by the deputy of the official in whom

the relevant power had been vested, a required administrative approval was not found in the file and the administration had wrongly determined the price of the flat. The irregularities were clearly imputable to the State administration; moreover, it does not appear that the applicant and her husband had any possibility of interfering with the administrative formalities. As regards the price of the flat, the Court does not consider that a slight difference between the estimates made in 1968 and in 1996 (see paragraph 10 above) could be seen as a substantive unlawfulness (see, by contrast, the case of *Wulpe* in the *Velikovi and Others* judgment, cited above, § 204). Moreover, the Court sees no indication that the flat was obtained or the price determined through abuse.

27. In view of the nature of the irregularities that led to the nullification of the applicant's title, the present case is similar to those of *Bogdanovi* and *Tzilevi*, examined in its *Velikovi and Others* judgment (cited above, §§ 220 and 224), where the Court held that in such cases the fair balance required by Article 1 of Protocol No. 1 could not be achieved without adequate compensation.

28. The applicant has not received any compensation. The Court notes, however, that she was not evicted from the property until August 2006 and that she was granted the tenancy of a municipal flat only a few months later, in November 2006.

29. Concerning the available compensation, the Court observes that in accordance with the relevant domestic law and practice (see paragraph 16 above), she was entitled to compensation in the form of bonds after January 2000. The applicant did not apply for bonds in due time and, as a result, she forwent the opportunity to obtain at least between 15% and 25% of the value of the flat, as that was the rate at which bonds were traded until the end of 2004 (see *Velikovi and Others*, cited above, §§ 226-228). The fact that bond prices rose at the end of 2004 or that the applicable law was amended in 2006 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 applicant. Indeed, the applicant could not have foreseen bond prices or legislative amendments and the Court cannot speculate whether she would have waited four or more years before cashing her bonds. Furthermore, the legislation on compensation changed frequently and was not foreseeable (*ibid.*, §§ 191 and 226).

30. In these circumstances, the Court finds that no clear and foreseeable possibility of obtaining compensation was secured to the applicant. Her failure to use the bonds compensation scheme will have to be taken in consideration under Article 41, but cannot affect decisively the outcome of her complaint under Article 1 of Protocol No. 1.

31. In view of the above considerations, there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 120,000 euros (EUR) in respect of the current market value of the flat. However, she did not submit an expert report or any other document on the basis of which this estimate had been made.

34. The Government did not comment.

35. To determine the amount to be awarded, the Court observes that it stated above that the applicant’s failure to use the bonds compensation scheme would have to be taken into consideration under Article 41 of the Convention. It notes that had the applicant made use of that scheme, she could have obtained between 15% and 25% of the value of the flat. The Court considers therefore that it must apply an appropriate reduction of the just satisfaction award on account of the applicant’s failure to make use of the possibility to obtain partial compensation. It accepts that the reduction must be modest, having regard to the fact that the relevant legislation on compensation was subject to frequent amendments in contradictory directions and was thus unpredictable and generated legal uncertainty (see paragraph 29 above and *Todorova and Others*, cited above, § 46).

36. Having regard to the above considerations, all the circumstances of the case and the information at its disposal about the real-estate market in Varna, the Court awards the applicant EUR 48,000 in respect of pecuniary damage.

B. Costs and expenses

37. The applicant did not submit a claim for cost and expenses. Accordingly, the Court considers that there is no call to award her any sum on that account.

C. Default interest

38. 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 remainder of the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 48,000 (forty-eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's 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