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

FIFTH SECTION

DECISION

Application no. 47023/11
Atanas Temelkov ATANASOV
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 29 November 2016 as a Committee composed of:

Khanlar Hajiyev, *President,*
Faris Vehabović,
Carlo Ranzoni, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 15 July 2011,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Atanas Temelkov Atanasov, is a Bulgarian national who was born in 1948 and lives in Yambol. He was represented before the Court by Mr M. Ekimdzhiev and Ms G. Chernicherska, lawyers practising in Plovdiv.

2. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant owned a property in Yambol. Pursuant to a decision of the mayor of 4 April 1986 it was expropriated for the purposes of constructing a residential building. The decision, based on section 98 (1) of

the Territorial and Urban Planning Act of 1973 (*Закон за териториалното и селищно устройство* – "the TUPA"), stated that the applicant was to receive by way of compensation a three-room flat in a building which was to be constructed by a housing construction cooperative ("the cooperative"). A further decision issued on 3 November 1989 stated that the applicant would also be given a garage in the same building.

5. In April 1986 the applicant vacated his property, after which he and his family were accommodated in a municipally-owned dwelling.

6. The cooperative which was to construct the building containing the applicant's flat and garage was created in 1987, with the applicant as one of its members. In 1989 the municipality granted that cooperative the right to erect a building comprising flats, garages and business premises on municipally-owned land. After the construction plans had been approved, in a decision of 8 November 1990 based on section 100 of the TUPA, the mayor specified the exact future flat and garage to be given to the applicant.

7. As provided for by law, the municipality subsequently deposited in the cooperative's bank account a sum equal to the value of the applicant's expropriated property, while the applicant himself paid in the remainder of the value of the future flat and garage.

8. The construction work started sometime in 1991 but was delayed; however, the applicant does not explain the reasons for that delay. In a letter dated 29 July 1997 addressed to the applicant, the municipal authorities mentioned the "extremely bad organisation" of the construction project.

9. In 2004 the construction of the building was apparently completed but for unspecified reasons a certificate of occupancy was not issued until July 2014.

10. In the meantime, in 2010 the applicant brought an action for damages under the State and Municipalities Responsibility for Damage Act of 1988 (*Закон за отговорността на държавата и общините за вреди, причинени на граждани*) for unlawful failure on the part of the Yambol local authorities to provide him with a flat and garage by way of compensation for his expropriated property. On 24 June 2010 the action was disallowed by the Yambol Administrative Court. Its judgment was upheld on 7 February 2011 by the Supreme Administrative Court. The domestic courts ruled that it was not the municipality but the cooperative which was under an obligation to construct the flat and garage and deliver them to the applicant, which meant that there was no unlawful failure to act on the part of the municipal authorities.

B. Relevant domestic law and practice

11. The relevant domestic law concerning the expropriation of property for public use, the provision of compensation and the domestic practice related thereto, have been summarised in the Court's judgment in the case

of *Kirilova and Others v. Bulgaria* (nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 72-79, 9 June 2005).

12. In adition, under section 82 (2) of the TUPA, in cases where properties were expropriated for the purpose of cooperative housing construction, the owners of such properties could, if they so wished, receive in compensation properties in the building to be constructed by the respective cooperative.

13. The Housing Construction Cooperatives Act (*Закон за жилищностроителните кооперации*) of 1978 provides for the creation of such cooperatives "for the organisation of construction projects" with the aim of providing its members with their own flats, garages or workshops (section 1). Cooperatives under the Act have their own legal personality (section 5).

COMPLAINTS

14. The applicant complained, relying on Article 1 of Protocol No. 1 and Article 13 of the Convention, of the lengthy delay in receiving the flat and the garage due to him, claiming that the municipal authorities in Yambol bore responsibility for that delay.

THE LAW

15. The Government did not comment on the admissibility and merits of the application.

16. The Court has examined complaints concerning delays in the provision of compensation for expropriated properties in a number of cases, starting with the leading case of *Kirilova and Others* (cited above; see also *Lazarov v. Bulgaria*, no. 21352/02, 22 May 2008; *Antonovi v. Bulgaria*, no. 20827/02, 1 October 2009; *Dichev v. Bulgaria*, no. 1355/04, 27 January 2011; and *Balezdrovi v. Bulgaria* [Committee], no. 36772/06, 20 September 2011).

17. The case of *Balezdrovi* concerned a flat that was due to be provided to the applicants and which was initially to be constructed by a housing construction cooperative. The Court pointed out that during that initial period the authorities' obligation had been limited to providing financing, which had sometimes been delayed, but this alone was insufficient to hold the authorities liable for the delays in the construction of the applicants' flat (see paragraphs 34-35 of the judgment).

18. Similarly, in the case at hand the applicant's flat and garage were to be constructed by a housing cooperative of which he was a member and

which had its own legal personality, separate from that of the authorities (see paragraphs 4, 6 and 13 above). It has not been shown that late provision of financing or any other action on the part of the Yambol municipality caused the delays in the construction works; as a matter of fact, the reasons for those delays remain unclear to the Court, the only reference to them provided by the parties being the local authority's letter addressed to the applicant on 29 July 1997 mentioning the "extremely bad organisation" of the construction project (see paragraph 8 above). Nor has the applicant shown that the municipal authorities were responsible for the substantial delay of ten years between the construction of the building in which his flat and garage were located and the delivery of a certificate of occupancy (see paragraph 9 above).

19. In view of the above, the Court is unable to conclude that the Yambol municipal authorities bore responsibility for the delay in providing a flat and a garage to the applicant. Unlike the case of *Balezdrovi* (see paragraph 36 of the judgment cited above), it has not been shown that the authorities were ever under a direct obligation to carry out the construction works and deliver the flat and the garage to which the applicant was entitled.

20. A conclusion in the same terms was reached by the domestic courts in the proceedings initiated by the applicant (see paragraph 10 above).

21. Accordingly, the Court is not satisfied that in the case at hand there was any interference by a public authority with the applicant's rights under the Convention.

22. This means that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 20 December 2016.

Anne-Marie Dougin	Khanlar Hajiyev
Acting Deputy Registrar	President