

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

FOURTH SECTION

CASE OF BALEZDROVI v. BULGARIA

(Application no. 36772/06)

JUDGMENT

STRASBOURG

20 September 2011

This judgment is final but it may be subject to editorial revision.

In the case of Balezdrovi v. Bulgaria**,**

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

Päivi Hirvelä, *President,*
Ledi Bianku,
Zdravka Kalaydjieva, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 30 August 2011,

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

PROCEDURE

1. The case originated in an application (no. 36772/06) 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 two Bulgarian nationals, Mrs Teodora Hristova Balezdrova and Mr Atanas Dimitrov Balezdrov ("the applicants"), on 30 August 2006.

2. The applicants were represented by Mr M. Ekimdzhiev, a lawyer practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. On 25 February 2010 the President of the Fifth Section decided to give notice of the application to the Government.

4. 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. In accordance with Protocol No. 14 to the Convention, the application was allocated to a Committee of three Judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants are spouses who were born in 1957 and 1955 respectively and live in Plovdiv.

6. Following partition proceedings, in 1980 the first applicant obtained title over a house together with the adjoining land in Plovdiv, previously owned by her ancestor.

7. By an order of 25 April 1984 the mayor of Plovdiv expropriated the properties with a view to constructing an apartment building. The order was based on sections 95 and 98 of the Territorial and Urban Planning Act of

1973 ("the 1973 Act") and stipulated that the first applicant was to receive as compensation a three-room flat in a building which was to be erected by a housing construction cooperative and partly financed by the State. The expropriated properties were valued at 7,431.81 old Bulgarian levs (BGL[1]).

8. By a supplementary order of 5 June 1986 based on section 100 of the 1973 Act (see paragraph 17 below), the mayor indicated the exact flat to be given to the first applicant by way of compensation, specifying the building in which it would be located and its exact size and price.

9. In November 1986 the applicants vacated the property and were accommodated in a State-owned dwelling. Subsequently the expropriated house was pulled down.

10. The flat allotted to the first applicant was valued at BGL 22,928. In 1987 the applicants paid to the cooperative part of that price. The remainder, which equalled the value of the first applicant's expropriated property, was to be covered by the State.

11. On 3 June 1987 the State Savings Bank informed the Bulgarian National Bank that all members of the housing construction cooperative had paid the instalments due by them for the construction of the building.

12. Apparently, the construction works started in 1987.

13. Between 1992 and 1997 the housing construction cooperative informed the mayor of Plovdiv, the Minister of Finance and the Minister of Public Works of the increase in construction material prices, including by providing in October 1992 and in July 1997 a calculation of the respective increase in the financing due by the authorities. The cooperative also drew the authorities' attention to delays in the construction works and requested that the State fulfilled its obligation to pay its share in the financing of the construction works.

14. It appears that between 1995 and 1997 the Ministry of Finance paid the State's share for the construction works which had been performed between 1992 and 1997. The applicants and the other persons entitled to receive flats in the building also made further financial contributions on account of the increase in construction material prices.

15. Apparently, in 1999 and 2001 the Plovdiv Municipality and the housing construction cooperative concluded contracts assigning the construction works of the building to several companies. According to an annex to the contract of 2001, signed in 2005, which specified each party's financial obligations the State was to cover the whole cost of the construction expenses for the flats of the cooperatives' members whose properties had been expropriated. The annex further specified that the Plovdiv Municipality's outstanding financial obligations towards the cooperative amounted to 13,800 new Bulgarian levs (BGN).

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

16. The part of the building where the first applicant's flat was located was completed and its use authorised on 23 July 2007. That month the first applicant and her family moved in the property. On 5 June 2008 the first applicant obtained a notary deed for the flat which stated that its market value was BGN 41,745.82 (21,344 Euros (EUR)).

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. The relevant domestic law and practice have been summarised in the Court's judgments in the cases of *Kirilova and Others v. Bulgaria* (nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 72-83, 9 June 2005) and *Lazarov v. Bulgaria* (no. 21352/02, § 19, 22 May 2008).

18. Pursuant to Article 13 § 2 of the 1968 Family Code in force at the relevant time real estate or goods acquired by one of the spouses during the marriage by means of inheritance remained personal property of that spouse.

19. According to section 16 § 4 of Ordinance No. 5 of 11 February 1986 (Наредба № 5 от 11.02.1986 г. за набиране и разходване на средствата по фонд "Жилищно строителство") the difference in the value of expropriated properties as determined at the time of expropriation and the value paid by the expropriated owner was to be covered by the State following the submission by the housing construction cooperative of a form containing an estimation of that difference.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

20. The applicants complained that as a result of the authorities' inaction they were not provided with the flat they were entitled to receive in compensation for the first applicant's expropriated property for an extended period of time, in breach of Article 1 of Protocol No. 1 to the Convention, 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."

A. Admissibility

1. The second applicant's victim status

21. The Government submitted that the second applicant could not claim to be a victim of the alleged violation of the Convention. They argued that the expropriated property belonged to the first applicant alone and that it was only her who was listed in the Property Registry as the owner of the flat provided to her in compensation. The Government thus considered that the second applicant's property rights were not affected by the events in question.

22. The applicants submitted that the flat provided in compensation for the first applicant's expropriated properties was jointly owned as they were spouses at the time the properties were acquired in 1980 and as the funds paid towards the construction came out of the family budget.

23. The Court observes that, although acquired during her marriage, the first applicant inherited the expropriated properties and was their only owner according to the provisions of domestic law (see paragraphs 6 and 18 above). In addition, it was only her who was provided the flat in compensation (see paragraph 8 above) and who was listed as the owner in the notary deed issued following the flat's completion (see paragraph 16 above). The second applicant did not have a vested right in the property.

24. The Court therefore considers that the complaint lodged by the second applicant on his own behalf is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4. The Court will henceforth refer to the first applicant as "the applicant".

2. The Government's objection of non-exhaustion of domestic remedies

25. The Government further contended that the applicant had failed to exhaust domestic remedies. In particular, they submitted that she could have requested a modification of the order to provide for compensation in cash, for compensation with a smaller flat, or compensation with a flat situated elsewhere. In the Government's view the applicant could lodge an action under the State and Municipality Responsibility for Damage Act and claim compensation for the damage sustained because of the delay in providing the flat due to her.

26. The Court notes that the objections and arguments put forward by the Government have been rejected in earlier similar cases (see *Kirilova and Others*, §§ 110-120, cited above; *Antonovi v. Bulgaria*, no. 20827/02, § 24,

1 October 2009) and sees no reason to reach a different conclusion in the present case. In particular, it notes that the domestic case-law referred to by the Government does not concern the award of damages for delays in providing compensation for expropriated property and as such cannot support the assertion that an action under the State and Municipality Responsibility for Damage Act was an effective remedy for the applicant in the circumstances of the present case.

27. It follows that the Government's objection of non-exhaustion of domestic remedies in respect of the applicant's 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 of the Convention. Nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

28. The applicant submitted that the authorities' failure to provide the necessary financing had resulted in her being unable to obtain the flat provided in compensation for her expropriated property for over twenty years and that this infringed her right under Article 1 of Protocol No. 1.

29. The Government submitted that the case differed significantly from *Kirilova and Others* (cited above) in that in the case at hand the State had not been under an obligation to construct the flat provided in compensation to the applicant. They further submitted that the Plovdiv Municipality had in no way impeded the construction of the apartment building and that it had provided financing according to the funds available to it. They also averred, relying on Ordinance No. 5 of 11 February 1986, that it had not been established that the applicant or the housing construction cooperative had submitted the documents required by that ordinance in order to secure State financing. Finally, the Government drew attention to the fact that the construction works between 2001 and 2007 had been carried out in a timely manner and that the flat was delivered to the applicant in July 2007.

2. The Court's assessment

30. The Court notes at the outset that, similarly to the case *Kirilova and others* as well as to the follow-up cases *Lazarov* and *Antonovi* (all cited above), the applicant in the instant case had a vested right to the flat awarded to her as compensation for her expropriated property (see paragraph 8 above).

31. As regards the scope of the case, the Court observes that it does not concern – and it has no jurisdiction *ratione temporis* to examine – the issues

linked to the taking of the applicant's property in 1984 or the adequacy of the compensation awarded at that time and that consequently the interference cannot be equated to a deprivation of possessions within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1. Instead, the alleged interference with the applicant's right to enjoyment of her possessions consisted of the delay in providing her with the compensation awarded which occurred after 7 September 1992, the date when the Convention and Protocol No. 1 entered into force in respect of Bulgaria. Accordingly, the Court will examine it under the first sentence of that paragraph (see *Kirilova and Others*, §§ 104 and 105, *Lazarov*, § 28, and *Antonovi*, § 29, all cited above).

32. The Court thus needs to establish whether the delay in providing the compensation awarded to the applicant for her expropriated property upset the fair balance which must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights (see the above-cited *Kirilova and others* judgment, § 106).

33. The Court observes in that regard that unlike the cases cited above, where the authorities were under an obligation to construct the flats provided in compensation for the applicants' expropriated properties, in the case at hand the State's duty as defined at the time of the expropriation was one of providing financing whereas the construction of the applicant's flat was to be carried out by a housing construction cooperative.

34. The Court thus considers it appropriate to distinguish between the period when the authorities were under an obligation to provide funds to the housing construction cooperative which was to use them towards the construction of the applicant's flat and the period after the contracts signed in 1999 and 2001 and the annex signed in 2005 (see paragraph 15 above) when the authorities became a party to the contracts for construction of the flat.

35. As regards the first period, the Court does not consider that the authorities can be regarded as responsible for the delay in the construction and delivery of the applicant's flat solely on account of the delay on their part in providing the funds due by them as the construction works themselves were to be carried out by a third party contracted by the housing construction cooperative.

36. However, following the agreements signed in 1999 and 2001 and the annex of 2005 the authorities became contractually bound to carry out the construction of the applicant's flat (see paragraph 15 above). What is more, according to the annex signed in 2005 and much as in the cases *Kirilova and others, Lazarov and Antonovi* (all cited above) they were entirely responsible for the construction of the flats of the members of the housing construction cooperative - such as the applicant - whose properties had been expropriated.

37. The Court notes, in that regard, the irregular nature of the financing provided by the State (see paragraphs 14 and 15 above) and that as of 2005 there still were outstanding financial obligations on its part. It also notes that, the Government do not contend that the applicant or the housing construction cooperative had not paid their share in the financing of the construction works and do not put forward any detail in support of their assertion that the construction works were being carried out in a timely manner. That being said, the Court cannot but conclude that it was the delay on the part of the public authorities in providing the necessary financing, coupled with their passive attitude during long periods of time that prevented the applicant from obtaining the flat provided to her in compensation for her expropriated property for a period of over eight years.

38. In the judgments of *Kirilova and Others* and *Lazarov* (both cited above) the Court found that the fair balance required under Article 1 of Protocol No. 1 had not been achieved due to the long delays in providing the properties, the authorities' passive attitude, and the long period of uncertainty endured by the applicants who, as a result, had to bear a special and excessive burden (see *Kirilova and Others*, § 123, *Lazarov*, § 32, *Antonovi*, § 30, all cited above). While taking note of the present case's discernible feature (see paragraphs 33 and 35 above), the Court sees no reason to reach a different conclusion bearing in mind the delay of more than eight years in the delivery of the applicant's flat following the moment when the Plovdiv Municipality became directly involved in the carrying out of the construction works.

39. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. The applicant claimed EUR 43,275 in respect of pecuniary damage resulting from the impossibility to use the flat provided to her in compensation. The amount represented the loss of rent sustained by the applicant between 1991 and 2007.

42. The Government contested these claims.

43. The Court finds it appropriate to adopt the same approach as that in the judgments in the cases of *Kirilova and Others v. Bulgaria* (just satisfaction), (nos. 42908/98, 44038/98, 44816/98 and 7319/02, 14 June 2007) and the above-cited cases of *Lazarov* (§§ 37-45) and *Antonovi* (§§ 33-42).

44. In respect of the alleged loss of rent, the Court observes that the applicant has not shown that she or her family had alternative housing available to them and, consequently, that she would have let out the flat. Furthermore, the applicant, who was provided with temporary municipal housing, did not claim that she or her family had incurred expenses in order to find accommodation while awaiting delivery of the flat. The Court nevertheless considers that the applicant has suffered a certain loss of opportunity on account of not having been able to use and enjoy the flat for an excessively long period of time (see *Kirilova and Others* (just satisfaction), cited above, § 33). Ruling in equity, it awards EUR 2,000 under this head.

2. Non-pecuniary damage

45. The applicant claimed EUR 20,000 in respect of non-pecuniary damage. She submitted she had suffered anxiety and frustration over an extended period of time.

46. The Government contested these claims as excessive and speculative. In their view the finding of a violation of the Convention would constitute sufficient just satisfaction for the applicant.

47. The Court considers that the breach of Article 1 of Protocol No. 1 must have caused the applicant non-pecuniary damage. Thus, having regard to the period of delay in respect of which it found a breach of the Convention, and ruling in equity, it awards the applicant EUR 2,500.

B. Costs and expenses

48. The applicant also claimed EUR 3,717.95 for the costs and expenses incurred before the Court including EUR 3,413.20 for legal fees, EUR 228.45 for translation and clerical expenses and EUR 76.70 for a valuation report. In support of her claim she presented a contract for legal representation, a time sheet, a translation contract and postal receipts. She requested that the amount awarded by the Court under this head be paid into the bank account of her representative, Mr M. Ekimdzhiev with the exception of EUR 400 which she had paid as an advance payment on the legal fees and EUR 76.70 for the cost of the valuation report.

49. The Government contested these claims as excessive.

50. 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. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads. EUR 1,523.30 of that amount is to be paid directly into the bank account of the applicant's legal representative, Mr M. Ekimdzhiev.

C. Default interest

51. 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* admissible the complaint submitted by Mrs. Teodora Balezdrova under Article 1 of Protocol No. 1 concerning the authorities' continued failure to provide her with the compensation she was awarded for her expropriated property and *declares* the remainder of the application inadmissible;

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 Mrs. Balezdrova, within three months the following amounts which are to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 2,500 (two thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, EUR 1,523.30 of which to be transferred directly into the bank account of the applicant's 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;

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

Done in English, and notified in writing on 20 September 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President