

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

FOURTH SECTION

CASE OF BOZHILOVI v. BULGARIA

(Application no. 9051/18)

JUDGMENT

STRASBOURG

15 March 2022

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



In the case of Bozhilovi v. Bulgaria,

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

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 9051/18) 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") on 14 February 2018 by two Bulgarian nationals, Ms Pavlinka Paneva Bozhilova and Mr Krasimir Bozhidarov Bozhilov, born in 1944 and 1975 respectively and living in Sofia ("the applicants") who were represented by Ms N. Sedefova, a lawyer practising in Sofia;

the decision to give notice of the complaints concerning the delays in providing compensation to the applicants for their expropriated property to the Bulgarian Government ("the Government"), represented by their Agent, Ms V. Hristova, of the Ministry of Justice, and to declare the remainder of the application inadmissible;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated in private on 22 February 2022,

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

SUBJECT MATTER OF THE CASE

1. The application concerns the delayed provision of compensation to the applicants for property of a predecessor of theirs, which was expropriated by the municipal authorities in Sofia in 1985 for urban development. By virtue of an order of 10 July 2006, the applicants were due to be provided with a flat in a building which the authorities intended to construct. The building was, however, never completed, and the company tasked to carry out the construction works went bankrupt in 2013.

2. By letters of 28 December 2011 and 9 January 2013 to the municipal authorities, the applicants requested to be offered other flat(s) in compensation. The statements therein were not notarised, as required by domestic law. It appears that in letters dated 17 July 2012 and 8 August 2012, the mayor advised the applicants that they could request financial compensation in lieu of compensation by way of another flat. In 2013 the applicants brought proceedings against the municipality claiming the market value of the flat due to them, but the courts found their claim inadmissible, holding that the applicants had failed to submit valid requests to the

authorities to replace the flat due to them with other assets. No compensation had yet been provided to the applicants by the time they filed their latest submissions with the Court in May 2021.

3. The applicants complained under Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention.

THE COURT'S ASSESSMENT

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

4. The case is of the type examined in *Kirilova and Others v. Bulgaria* (nos. 42908/98 and 3 others, 9 June 2005), and the follow-up cases. The Court will therefore apply the general principles concerning excessive delays for compensation for expropriated property established therein.

5. The Government argued that the applicants had failed to exhaust the available domestic remedies because they had not duly followed the procedure prescribed by law to submit a notarised request for re-compensation by way of another flat, or for financial compensation; nor had they requested the cancellation of the expropriation or a fresh valuation of their expropriated property for the purposes of receiving financial compensation (for the relevant domestic law provisions see *Kirilova and Others*, cited above, §§ 72-79). The applicants disagreed with those arguments.

6. The applicants' failure to pursue those avenues cannot lead to the conclusion that they failed to exhaust effective domestic remedies, as required under Article 35 § 1 of the Convention. While the remedies in question could have "unblocked" the compensation procedure and allowed its completion, they would not have made up for the significant delays that had already accumulated before the remedies in question became available to the applicants (see below). While, therefore, the Government's objection is to be dismissed, their arguments in that respect will be taken into account in the assessment of whether the authorities were entirely responsible for the excessive delays in providing compensation to the applicants.

7. In addition, the application 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.

8. The applicants' entitlement to be provided with a flat as compensation for their expropriated property arose in 1985, and they have not yet received the flat due to them, or any alternative compensation. Thus, in the present case the delay is twenty-nine years (from the entry into force of Protocol No. 1 to the Convention for Bulgaria in 1992 onwards).

9. At some point in the period 2012-2013 the applicants seem to have become aware that the specific flat due to them would not be provided.

Around that time the company tasked with its construction went bankrupt, and by that time the applicants had already sent letters, albeit not meeting the formal statutory requirements, to the municipal authorities, seeking re-compensation by way of another flat. The applicants contended that they had not received the mayor's letters of July and August 2012, but it is irrelevant whether or not this was the case. It is evident from the applicants' submissions to the Court that they were aware of the possibility of seeking financial compensation in lieu of compensation by way of a flat. Furthermore, in September 2013 they brought proceedings for damages against the municipal authorities and the construction company, seeking the market value of the flat due to them. Thus, by September 2013 at the latest, they must have been aware that they could resort to the various other means of redress available under domestic law, in order to "unblock" the compensation procedure (compare the circumstances in *Rashkova and Simeonska v. Bulgaria* [Committee], no. 41090/12, §§ 10-15, 2 February 2017, where this was done successfully). The applicants therefore appear to have been responsible for some of the delay.

10. Although the applicants did send letters to the authorities requesting re-compensation by way of another flat, they have not shown that they duly followed the procedure prescribed by law and have not provided satisfactory justification for their failure to do so (see, by way of comparison, *Velyov and Dimitrov v. Bulgaria* (dec.) [Committee], no. 64570/10, §§ 27-31, 20 September 2016). Furthermore, they have not sought financial compensation. They argued that pursuing that latter route would have been inadequate in their case, as any compensation awarded would have been based on the market value of the property at the time of the expropriation in 1985, and would therefore not have taken into account the relevant economic changes. However, this has not been the approach of the domestic courts, as they have accepted that compensation should be calculated on the basis of what the value of the expropriated property would have been at the time of the compensation decision (relevant domestic case-law in that regard has been cited in *Petrovi v. Bulgaria* [Committee], no. 26759/12, § 16, 2 February 2017).

11. Accordingly, the Court cannot conclude that any delays which occurred after September 2013 in providing compensation to the applicants were due to any passive attitude on the part of the authorities or any failure to act in good time and in an appropriate and consistent manner (by contrast, see *Dobrodolska v. Bulgaria* [Committee], no. 34272/09, §§ 19-22, 13 October 2016). It appears, on the contrary, that the applicable rules did not permit the authorities to take any steps aimed at replacing the specific flat that was due with other assets without valid requests on the part of the applicants. The applicants are therefore largely responsible for any delays after 2013.

12. Notwithstanding the above considerations, the delay of around twenty years (from 1992 to 2013) in providing compensation for the applicants'

expropriated property, for which the Government has not provided any justification, is significant. In addition, any action which the applicants could have taken would not have automatically concluded the compensation proceedings, as further decisions would have had to be taken identifying the specific assets to be provided. This is sufficient for the Court to conclude that the delays caused through the authorities' fault were too lengthy, that the applicants have had to suffer an excessive burden, and that the fair balance required under Article 1 of Protocol No. 1 has not been achieved (see *Kirilova and Others*, cited above, § 123).

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

14. The applicants also complained under Article 13 of the lack of effective domestic remedies. The complaint is closely linked to the one under Article 1 of Protocol No. 1 and must therefore also be declared admissible. However, having regard to the considerations and conclusions set out above, the Court considers that it is not necessary to examine separately the complaint under Article 13 (see *Kirilova and Others*, cited above, § 127).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicants asked the Court to instruct the authorities to provide the flat due to them or, if the authorities failed to do so, to pay them the market value of such a flat. The applicants referred in that respect to an expert report commissioned by them for the purpose of the domestic proceedings for damages, which estimated the property's value at 139,829 euros (EUR). They also claimed compensation in the amount of EUR 18,000 in respect of pecuniary damage for their inability to use and enjoy the compensation due to them for many years. In addition, they claimed the value of the repair works that they had carried out in the municipal dwelling where they have been housed, in the amount of EUR 621.

16. The applicants claimed EUR 10,000 for each of them in respect of non-pecuniary damage.

17. Lastly, they claimed EUR 2,352 for costs and expenses, covering EUR 1,840 for legal representation, EUR 205 for translation costs, and EUR 307 for the costs for the expert report mentioned above. To support their claims, they presented contracts for legal representation and the relevant receipts.

18. The Government contested the claims and considered them exaggerated.

19. The Court, referring to its finding above that the applicants could claim financial compensation or another flat directly from the local

authorities, a possibility which is still open, sees no justification to award them the value of the flat due to them (see *Petrovi*, cited above, § 39). It reiterates that it has only found a violation of Article 1 of Protocol No. 1 in relation to the excessive delays in the compensation proceedings, and therefore it does not discern any causal link between that violation and the sum claimed by the applicants for the repair works to their dwelling. It therefore rejects these parts of the applicants' claim. On the other hand, the Court is of the view that it is justified to award the applicants damages for lost opportunity owing to their inability to use and enjoy the compensation due to them over a substantial period of time (see *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98 and 3 others, §§ 28-33, 14 June 2007). Accordingly, it finds it appropriate to award jointly to the two applicants EUR 12,500 for their inability to profit from the compensation due to them.

20. In respect of non-pecuniary damage, ruling on an equitable basis, the Court awards jointly to the two applicants EUR 3,000.

21. Having regard to the fact that the present case concerns a repetitive complaint and in view of the documents in its possession, the Court considers it reasonable to award the applicants EUR 1,000 for legal representation, and EUR 205 for translation costs, plus any tax that may be chargeable to them. The Court sees no reason to reimburse the expenses incurred for an expert report submitted by the applicants in the domestic proceedings concerning the market value of the flat due to them, because those expenses are not related to the nature of the violation found in the case concerning the excessive delays for compensation (see *Popov and Chonin v. Bulgaria*, no. 36094/08, § 76, 17 February 2015).

22. The Court further 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. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds*

   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 12,500 (twelve thousand five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 1,205 (one thousand two hundred and five euros), plus any tax that may be chargeable to the applicants, 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;

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

Done in English, and notified in writing on 15 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Tim Eicke
Deputy Registrar	President