

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

FIFTH SECTION

CASE OF DOBRODOLSKA v. BULGARIA

(Application no. 34272/09)

JUDGMENT

STRASBOURG

13 October 2016

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



In the case of Dobrodolska v. Bulgaria,

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

Khanlar Hajiyev, *President,*
Faris Vehabović,
Carlo Ranzoni, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 20 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 34272/09) 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, Ms Roza Stefanova Dobrodolska ("the applicant"), on 3 June 2009.

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

3. On 10 January 2014 the complaint concerning the authorities' failure to provide the applicant with a flat in compensation for expropriated property was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1961 and lives in Pernik.

5. Her mother owned a house with a yard in the city, which were expropriated in 1978 on the basis of section 98 (1) of the Territorial and Urban Planning Act of 1973 (*Закон за териториалното и селищно устройство* – "the TUPA") with a view to constructing a highway. It was stated in the expropriation decision that the applicant's mother was to be compensated with a three-room flat, and the applicant was to receive a two-room flat.

6. The flat that the applicant's mother was due was constructed and provided to her in 1985. Until then the family lived in a municipally-owned dwelling.

7. The expropriated house was pulled down in 1986.

8. In a decision of 14 July 2000, issued on the basis of section 100 of the TUPA, the Pernik mayor indicated the exact flat to be provided to the applicant. It measured 75 square metres and was situated in a building under construction. It was stated in the decision that the flat's value was 22,424.84 Bulgarian levs (BGN), although it was not specified whether this amount took into account the value of the expropriated properties. Later on in 2000 the applicant paid to the municipality BGN 28,000 for the flat's value; it is unclear how this amount was arrived at.

9. The building where the flat was situated was completed in 2003, but the flat that the applicant was due was never handed over to her. The applicant was told that it had been transferred by the municipality to third parties.

10. In the following years the applicant and her mother filed complaints with the regional governor, the Prime Minister and the Parliament.

11. The authorities have not yet fulfilled their obligation to provide the applicant with a flat. The applicant states that she does not have another dwelling and that together with her husband and children she has been living with her parents in their flat.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice 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).

THE LAW

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

13. The applicant complains under Article 1 of Protocol No. 1 of the authorities' continued failure to provide her with a flat as compensation for the real property expropriated in 1978.

14. Article 1 of Protocol No. 1 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."

15. The Court notes that the application 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.

16. On the merits, the Court starts by noting that the case is similar to the ones examined by it in *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. As in these cases (see, for example, *Kirilova and Others*, § 104, and *Antonovi*, § 28), the Court is of the view that the 1978 expropriation decision, stating that the applicant was to receive a two-room flat in compensation (see paragraph 5 above), created an entitlement for her which has not been disputed by the authorities and qualifies as a "possession" within the meaning of Article 1 of Protocol No. 1. The authorities' failure to provide that flat amounts to interference with the applicant's rights, which falls to be examined under the first sentence of the first paragraph of Article 1 of Protocol No. 1 laying down in general terms the principle of peaceful enjoyment of property (see *Kirilova and Others*, § 105, and *Lazarov*, § 28, both cited above).

18. To ascertain whether the Bulgarian State has complied with its obligations under Article 1 of Protocol No. 1, the Court must examine whether a fair balance has been struck between the general interest and the applicant's rights. Very long delays in the provision of compensation, coupled with the authorities' unwillingness to resolve the problem, are factors, among others, which can upset that balance (see *Kirilova and Others*, cited above, § 123).

19. The applicant's entitlement to receive a flat arose in 1978, thirty-eight years ago, twenty-four of which, namely after 7 September 1992 when the Convention entered into force for Bulgaria, within the Court's temporal jurisdiction. Such a long period appears clearly unjustified (see *Dichev*, cited above, § 28).

20. This is coupled with the apparent unwillingness on the part of the authorities to solve the problem, as even though an appropriate flat was available for the applicant in 2003, they chose to transfer it to a third party (see paragraph 9 above).

21. The applicant has not to this day received the flat due to her, despite her efforts in that regard (see paragraph 10 above).

22. In cases like the present one it is incumbent on the authorities to act in good time, and in an appropriate and consistent manner. Instead, the authorities hindered a real possibility to fulfil their obligations, and otherwise adopted a passive attitude, leaving the applicant in a state of uncertainty as to whether and when she would receive the compensation to

which she was entitled. To this must be added the lack of effective domestic remedies for rectifying the situation. That state of affairs cannot be considered compatible with the State's obligations under Article 1 of Protocol No. 1 (see *Kirilova and Others*, §§ 121 and 123, *Antonovi*, § 30, and *Dichev*, § 30, all cited above).

23. There has accordingly been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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. Pecuniary damage

25. The applicant stated that she wished to receive the flat due to her.

26. She claimed in addition BGN 231,000 (the equivalent of EUR 117,857) for the impossibility to use and enjoy the flat in the period between 1979 and 2015, plus "the lawful interest" for the same period. The amount claimed represented the rent (BGN 550 a month) which the applicant considered that she could have obtained had she been leasing the flat out.

27. Lastly, the applicant claimed BGN 7,860 (the equivalent of EUR 4,010), a sum allegedly "wrongly" paid by her in 2000 for the flat due to her (see paragraph 8 above), plus "the lawful interest" for the period from 2000 to 2015.

28. The Government submitted a valuation report prepared by an expert in July 2014, stating that the market value of the flat allocated to the applicant by the 2000 decision was BGN 51,200 (the equivalent of EUR 26,122).

29. The Government contested the claim for lost profit (see paragraph 26 above), considering the amount of BGN 231,000 "arbitrary". In addition, they pointed out that the applicant would have most likely lived in the flat due to her, had it been delivered to her in time, and would not have leased it out.

30. As regards, firstly, the damage stemming from the continuing failure of the authorities to deliver the flat due to the applicant, the Court considers that, in the circumstances, and seeing that the flat indicated in the order of 14 July 2000 has already been transferred to a private party, the best way to wipe out the consequences of the breach of Article 1 of Protocol No. 1 would be for the respondent State to provide to the applicant an equivalent flat. If the respondent State does not make such delivery within three

months, it must pay the applicant a sum corresponding to the current value of the flat (see *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 27, 14 June 2007). As to that value, the Court, taking also into account information available to it as to the property market in Pernik, considers that the amount indicated in the expert report mentioned in paragraph 28 above is just. Accordingly, the Government should pay in compensation that amount, namely EUR 26,122, plus any tax that may be chargeable.

31. Concerning, secondly, the damage sustained on account of the impossibility for the applicant to use and enjoy the flat due to her, the Court is unable to follow the method suggested by her (see paragraph 26 above), for several reasons. Firstly, the "period of damage" did not start in 1979, but on 7 September 1992, when Protocol No. 1 came into force in respect of Bulgaria. Secondly, it is unclear whether the applicant would have let the flat out, seeing that she did not own other dwelling and had to live in her parents' flat (see paragraph 11 above). Thirdly, the applicant would have inevitably experienced some delays in finding suitable tenants, would have incurred expenses to maintain the property, and would have been subject to taxation on any rent. Lastly, it is unclear how the eventual rent of BGN 550 was estimated, and, moreover, in view of the economic realities in Bulgaria, it is unrealistic to assume that rent throughout the period since 7 September 1992 would have been equal to that charged at present (see *Kirilova and Others* (just satisfaction), §§ 28-30, and *Dichev*, § 43, both cited above).

32. Nonetheless, the applicant may be regarded as having suffered a certain loss of opportunity on account of not being able to use and enjoy the flat due to her over a substantial period of time (see *Kirilova and Others* (just satisfaction), cited above § 33). Having regard to the number of imponderables involved, the Court considers that it must rule in equity. It awards the applicant EUR 8,000, plus any tax that may be chargeable.

33. Lastly, the Court rejects the applicant's claim described in paragraph 27 above. It observes that even if the applicant's allegation that she was requested to pay more than necessary for the value of the flat due to her is accurate, there is no causal link between any damage thus incurred and the violation of the applicant's rights found in the case.

B. Non-pecuniary damage

34. Under this head the applicant claimed BGN 45,000 (the equivalent of EUR 22,960). The Government contested the claim as excessive.

35. The Court is of the view that the applicant must have experienced frustration as a result of the authorities' prolonged failure to deliver the flat to which she was entitled and of their reluctance to solve the problem for such a lengthy period of time. Taking into account the relevant

circumstances, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage.

C. Default interest

36. 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. *Declares* the application admissible;

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

3. *Holds* that the respondent State is to deliver to the applicant, within three months, the ownership and possession of a flat equivalent to the one allotted to her by the decision of 14 July 2000;

4. *Holds* that, failing such delivery, the respondent State is to pay the applicant, within the same period of three months, EUR 26,122 (twenty-six thousand one hundred and twenty-two euros), and that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on this amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 8,000 (eight thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage for the impossibility to use and enjoy the flat due to her;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Khanlar Hajiyev
Deputy Registrar	President