

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

FOURTH SECTION

CASE OF HOLEVICH v. BULGARIA

(Application no. 25805/05)

JUDGMENT

STRASBOURG

19 July 2011

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



In the case of Holevich 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 28 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 25805/05) 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, Ms Neli Ilieva Holevich and Mr Alexander Genov Holevich ("the applicants"), on 5 July 2005.

2. The applicants were represented by Mr M. Ekimdjiev and Ms K. Boncheva, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicants alleged, *inter alia*, a deprivation of their property without compensation, excessive length of the civil proceedings brought by them under the 1988 State Responsibility for Damage Act and lack of an effective remedy related thereto.

4. On 15 June 2009 the President of the Fifth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. 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.

6. Both the applicant and the Government filed observations.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants were born in 1946 and 1947 respectively and live in Sofia. They are spouses.

8. On the basis of an order of 26 September 1990 issued by the secretary of the Sofia municipality, the applicants concluded a sale-purchase contract with the Sofia municipality by which they bought a State-owned apartment. The price they paid was 12,926 old Bulgarian levs ("BGL").

9. On a later unspecified date the municipality apparently granted the tenancy of the same apartment to another family. In the beginning of 1992 the applicants brought a *rei vindicatio* action against them claiming the possession of the apartment.

10. In a judgment of 22 February 1993 the Sofia District Court dismissed the claim. On 7 February 1995 the Sofia City Court upheld the lower court's judgment. The courts found that the sale-purchase contract of 1990 was null and void *ab initio* as the administrative decision authorising the transaction had not been signed by the mayor, as required by law, but by the secretary of the municipality, the latter having had no power to sign in the mayor's stead. The applicants, thus, had not shown that they were the owners of the apartment and could not take the possession thereof. The applicants did not submit a cassation appeal (a "petition for review") before the Supreme Court. As a result, the judgment of 7 February 1995 became final on an unspecified date in 1995.

11. On an unspecified date in the beginning of 1995 the applicants brought proceedings under the State Responsibility for Damage Act ("the SRDA") seeking damages from the Sofia municipality for having sold them the apartment in breach of the statutory requirements. The Sofia City Court held numerous hearings and adjourned the case on various occasions. A few hearings were adjourned for correction of the applicants' statement of claim and in relation to their requests for increase of the claimed amounts, which delayed the examination of the case by several months. On 29 March 2002 the court delivered its judgment with which it allowed the claim and ordered the municipality to pay 24,000 new Bulgarian levs ("BGN") in damages as well as costs and expenses.

12. On appeal by the municipality filed on 30 May 2002, the Sofia Court of Appeal held one hearing on 28 May 2003. In a judgment of 6 June 2003 it reversed the lower court's judgment and disallowed the claim. The court found that the authorities' actions in concluding the sale-purchase contract did not give rise to a responsibility under the SRDA because the contract in issue entailed civil-law consequences and the case did not concern the exercise of State power.

13. The applicants filed an appeal on points of law on 14 October 2003. The Supreme Court of Cassation held one hearing on 19 January 2005 and, in a final judgment of 18 February 2005, upheld the court of appeal's judgment. The court held that the nullification of a civil transaction, which was possible in relation to any transaction and was an issue regulated by the general civil law – the Contracts and Obligations Act, could not entail State liability under the SRDA.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Recovery of sums under void contract and the effect of inflation

14. Pursuant to section 34 of the Obligations and Contracts Act each party to a void contract can recover from the other party the sums paid or the property transferred under the contract. By section 55 (1) of the same Act, everyone who has paid a sum of money on a non-existent ground is entitled to seek its recovery.

15. According to section 70 of the 1951 Property Act an individual is considered to have acted in good faith if, unaware of a procedural defect in his title, he or she entered into possession of a piece of property. Under section 72 a *bona fidae* possessor may claim the value of improvements made in the property (also Interpretative Decree No. 6 of 1974 of the Supreme Court).

16. In accordance with the Bulgarian courts' established practice revalorisation of claims to reflect inflation and currency depreciation is not possible.

B. State responsibility for damages

17. The 1988 State Responsibility for Damage Act (now the State and Municipalities Responsibility for Damage Act) provides, in its section 1, that the State shall be liable for damage occasioned by State bodies or State officials in the exercise of their administrative functions. In accordance with the Bulgarian courts' practice, claims for damages in relation to omissions in the process of executing a sale-purchase contract are not possible under the SRDA as such omissions occurred in the context of a civil transaction, whereas the SRDA concerned State liability occasioned by acts in the exercise of State power (see *Velikovi and Others v. Bulgaria*, nos. 43278/98 et al., § 127, 15 March 2007).

C. Remedies in respect of length of civil proceedings

18. Until July 1999 Bulgarian law did not provide for any remedies in respect of length of civil proceedings.

19. A new procedure, "complaint about delays", was introduced in July 1999, by virtue of Article 217a of the Code of Civil Procedure 1952, in force until 2007. Pursuant to this procedure, a litigant aggrieved by the slow examination of the case could file a complaint before the president of the higher court. The latter had the power to issue mandatory instructions for faster processing of the case.

THE LAW

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

20. The applicants complained that they had been deprived of their property arbitrarily and could not receive compensation, in violation of Article 1 of Protocol No. 1 of 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."

21. The Government contested that argument. They argued that the applicants had not exhausted the available domestic remedies as they had not sought recovery of the price paid or compensation under the general tort law.

22. Insofar as the applicants may be understood as complaining that errors committed by State officials in 1990 led to the invalidation of their title, the Court finds that this part of the complaint falls outside its competence *ratione temporis*, which only covers the period after 7 September 1992, the date of the Convention's entry into force with regard to Bulgaria.

23. Insofar as the applicants complain that the domestic courts' assessment in the 1992-1995 proceedings of the validity of the sale-purchase contract was arbitrary and their approach contrary to legal certainty, the Court need not examine whether the applicants may claim to

have had a "possession" within the meaning of Article 1 of Protocol No. 1 even if their title was found null and void *ab initio* or whether they have exhausted domestic remedies.

24. This is so because at all events this part of the applicants' complaint is inadmissible as being time-barred. In particular, the issue of the contract's validity was decided by a judgment of 7 February 1995 of the Sofia City Court which became final shortly thereafter, whereas the present application was introduced ten years later, in 2005 (see *Todorovi v. Bulgaria* (dec.), no. 19108/04, 12 May 2009). The proceedings for damages which ended in 2005 are without relevance to the starting point of the six months' time-limit under Article 35 § 1 as they concerned alleged negligence on the part of municipal employees in relation to the execution of the 1990 contract and did not concern the issue whether the domestic courts, in the 1992-1995 proceedings, rendered arbitrary judgments in violation of Article 1 of Protocol No. 1. Accordingly, this part of the complaint must be rejected as submitted outside the six-month time limit.

25. The remaining complaint raised by the applicants under Article 1 of Protocol No. 1 is that the refusal of the courts in the 1995-2005 proceedings to grant their claim for damages amounted to deprivation of property. The claim in question was that the State was liable under the SRDA to pay them pecuniary damages in an amount equal to the market price of the apartment, as well as non-pecuniary damages, on grounds that municipal officials had committed omissions in relation to the execution of the 1990 contract.

26. The Court reiterates that "possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. The applicant does not have a "legitimate expectation" where it could not be said that he or she had a currently enforceable claim that was sufficiently established; the legitimate expectation must be of a nature more concrete than a mere hope and be based in a legal provision or a legal act such as a judicial decision (see *Kopecký v. Slovakia* [GC], no. 44912/98, §§ 35, 49, ECHR 2004-IX, *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, §§ 69 and 73, ECHR 2002-VII and *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I).

27. Under Bulgarian civil law, in cases as the applicants', the buyer is entitled to recover the price paid and to obtain compensation for any improvements made in the property (see paragraphs 14-15 above). The applicants were entitled to such payments following the declaration of nullity of the transaction but they did not seek them from the municipality by using the means available under the civil law. The applicants object that they would have received a token amount had they sought these payments as a result of the inflation and the domestic courts' established practice refusing revalorisation of claims (see paragraph 16 above). The Court has

already held in this respect that Article 1 of Protocol No. 1 cannot be interpreted as conferring upon States a positive obligation to maintain the value of claims or any other assets in the face of inflation (see, *Todorovi v. Bulgaria* (dec.), no. 19108/04, 12 May 2009 and *O.N. v. Bulgaria* (dec.), no. 35221/97, 6 April 2000).

28. The applicants sought instead compensation under the SRDA which was, according to the domestic law and practice, not applicable in relation to the civil-law consequences of defective or void civil transactions (see paragraph 17 above). Bulgarian law did not provide for State liability in circumstances as those that obtained in the applicants' case and it was hardly surprising that the applicants' claims were rejected (see paragraph 13 above).

29. The Court thus finds that the applicants have not shown that they had a claim under domestic law for compensation as a result of the omissions made by municipal officials in relation to the 1990 contract. They cannot argue, therefore, that they had a "possession" within the meaning of Article 1 of Protocol No. 1. Consequently, the refusal of the domestic courts to award them the compensation sought under the SRDA did not amount to interference with the peaceful enjoyment of their possessions. It follows that this part of the complaint under Article 1 of Protocol No. 1 is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3(a) and must be rejected in accordance with Article 35 § 4.

30. In sum, the applicants' complaints under Article 1 of Protocol No. 1 must be declared inadmissible.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

31. The applicants complained that the length of the proceedings under the SRDA had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

32. The period to be taken into consideration began on an unspecified date in the beginning of 1995 when the applicants brought their claim (see paragraph 11 above) and ended on 18 February 2005, when the Supreme Court of Cassation gave a final judgment in the case (see paragraph 13 above). It thus lasted about ten years for three levels of jurisdiction.

A. Admissibility

33. The Government argued that the applicants had failed to exhaust the available domestic remedies because they had not filed a "complaint about delays" (see paragraph 19 above).

34. The applicants replied that such a complaint had not represented an effective remedy as it could not have led to speeding up the proceedings or receiving an appropriate redress for the delays.

35. The Court observes that the "complaint about delays" was introduced in Bulgarian law in July 1999. At that time the applicants' case had already been pending for about four and a half years before only one level of jurisdiction (see paragraph 11 above). The delays during that period could not be thus made up (see *Djangozov v. Bulgaria*, no. 45950/99, § 52, 8 July 2004 and *Rachevi v. Bulgaria*, no. 47877/99, § 67, 23 September 2004). In respect of the period after July 1999, the Court notes that the case was still pending before the Sofia City Court until 29 March 2002 which accumulated another two years and nine months (see paragraph 11 above). It is true that the applicants could have used the "complaint about delays" which might have speeded up the examination of the case by several months at best (see *Tzvyatkov v. Bulgaria*, no. 2380/03, §§ 30-31, 22 October 2009, *Kuncheva v. Bulgaria*, no. 9161/02, § 40, 3 July 2008 and *Mincheva v. Bulgaria*, no. 21558/03, §§ 104-107, 2 September 2010). However, the Court is not convinced that this could have a significant impact on the overall duration of the proceedings.

36. In view of the above, in the particular circumstances of the case, a "complaint about delays" did not represent an effective remedy to be exhausted within the meaning of Article 35 § 1 of the Convention. The Government's objection is therefore dismissed.

37. The Court further finds that the applicants' complaint about the length of the proceedings is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

38. The Government argued that the applicants' case had been examined within a reasonable time. The case had been factually and legally complex because it had unfolded at a time when the relevant legislation had been subject to amendments. Furthermore, the applicants had been responsible for some of the delays as they had failed to correct their statement of claim in due course and had asked on several occasions an increase of the claim which also had necessitated further adjournments.

39. The applicants argued that the case had not been complex and that all delays had been imputable to the authorities.

40. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake

for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

41. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above, §§ 43-44 and *Rachevi v. Bulgaria*, cited above, §§ 87-91). Having examined all the material submitted to it, the Court has not been persuaded by the Government to reach a different conclusion in the present case. In particular, it observes that the proceedings remained pending before the Sofia City Court for a period of about seven years, which is excessive in itself in the absence of concrete justification. No such justification was established by the respondent Government. The Court also finds that the adjournments in relation to the applicants' conduct in the proceedings did not cause a delay of more than a few months.

42. In view of the above, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

43. There has been, accordingly, a breach of Article 6 § 1.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

44. The applicants complained under Article 13 of the Convention that they had not had an effective domestic remedy for the length of the proceedings under the SRDA. Article 13 reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

45. The Government pointed to the existence of the "complaint about delays" not having been used by the applicants.

46. In response, the applicants reiterated that the "complaint about delays" could not be considered as an effective remedy.

47. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

48. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudła v. Poland* [GC], no. 30210/96, § 156, ECHR 2000-XI). A remedy is effective if it prevents the alleged violation or its continuation or provides adequate redress for any breach that has already occurred (ibid., § 158 and *Mifsud v. France* (dec.) [GC], no. 57220/00, ECHR 2002-VIII). Even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (*Kudła v. Poland*, cited above, § 157).

49. The Court already found above, in relation to the question of exhaustion of domestic remedies for the applicants' complaint under Article 6, that in the particular circumstances of the case the "complaint about delays" did not represent an effective remedy. A similar conclusion has been reached in a number of other Bulgarian cases (see, for example, *Stefanova v. Bulgaria*, no. 58828/00, §§ 66-73, 11 January 2007, *Mincheva v. Bulgaria*, cited above, § 105, *Simizov v. Bulgaria*, no. 59523/00, § 55, 18 October 2007 and *Maria Ivanova v. Bulgaria*, No. 10905/04, § 35, 18 March 2010). In addition, the Government have not shown that Bulgarian law provides for other means of redress whereby a litigant could obtain the speeding up of civil proceedings. Finally, as regards compensatory remedies, the Court has also not found it established that in Bulgarian law there exists the possibility to obtain compensation or other redress for excessively lengthy proceedings (see, for example, *Rachevi v. Bulgaria*, cited above, §§ 96-104).

50. Accordingly, for the reasons set above, the Court finds that there has been a violation of Article 13 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

51. Lastly, the applicants complained under Article 14 in conjunction with Article 1 of Protocol No. 1 that, as a result of the alleged unclear Bulgarian law and jurisprudence in the sphere of void civil contracts, they had been treated less favourably than the State in the transaction in issue. They also complained under Article 8 about a violation of the right to respect for their home and under Article 6 § 1 about lack of access to court in respect of the national courts' refusal to examine their claim under the SRDA.

52. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

53. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3(a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

54. 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

55. The applicants claimed 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 63,021, the alleged market value of the flat and alleged loss of earnings from renting it out, in respect of pecuniary damage.

56. The Government submitted that in case a violation is found, the awarded just satisfaction should be reduced as the amounts claimed by the applicants are excessive.

57. The Court recalls that it declared inadmissible the complaints under Article 1 of Protocol No. 1. It does not discern any causal link between the violations of Articles 6 and 13 and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it observes that the applicants must have sustained non-pecuniary damage as a result of the excessive length of the proceedings and lack of effective remedy thereto. Ruling on an equitable basis and taking into account all the circumstances of the case, it awards jointly to the applicants EUR 3,200 in respect of non-pecuniary damage.

B. Costs and expenses

58. The applicants also claimed EUR 3,220 in lawyers' fees for the proceedings before the Court. They further claimed EUR 144 in costs for the translation of their observations, EUR 19 in postage and EUR 20 in stationery costs. In support of this claim they presented a fees' agreement with their lawyer, a translation contract and postage receipts. The applicants requested that the amount awarded be paid directly to their lawyer, Mr Ekimdjiev, except for EUR 500 already paid by them in advance to the lawyer.

59. The Government contested these claims as excessive.

60. 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. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 900, covering costs under all heads, of which EUR 400 to be paid directly into the bank account of the applicants' legal representative.

C. Default interest

61. 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 complaint concerning the length of the civil proceedings and the lack of effective remedies in that respect admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;

3. *Holds* that there has been a violation of Article 13, in conjunction with Article 6 § 1 of the Convention, on account of the lack of an effective remedy for the excessive length of the proceedings;

4. *Holds*
   a) that the respondent State is to pay to the applicants, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 3,200 (three thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 900 (nine hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, EUR 400 (four hundred euros) of which to be paid directly into the bank account of the applicants' legal representative, Mr Ekimdjiev;
   (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 19 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Päivi Hirvelä
Deputy Registrar	President