

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

FIFTH SECTION

CASE OF KALEV v. BULGARIA

(Application no. 9464/11)

JUDGMENT

STRASBOURG

10 November 2016

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



In the case of Kalev 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 Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 11 October 2016,

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

PROCEDURE

1. The case originated in an application (no. 9464/11) 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, Mr Angel Radkov Kalev ("the applicant"), on 11 January 2011.

2. The applicant was represented by Ms A. Gavrilova-Ancheva, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms R. Nikolova, of the Ministry of Justice.

3. On 10 January 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1944 and lives in Sofia.

5. The applicant's father owned a house with a yard in Sofia, which were expropriated by a decision of the mayor of 16 April 1987 with a view to constructing embassy buildings. 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's father was to be compensated with a two-room flat and the applicant was to be compensated with another, three-room, flat.

6. By a supplementary decision of 15 April 1988, based on section 100 of the TUPA, the mayor determined the exact location, size and other details in respect of the future flats to be offered in compensation. The flats were to be situated in a building which had to be constructed by the Bureau for

Servicing the Diplomatic Corps ("the BSDC"). The one to be provided to the applicant's father measured 64.26 square metres.

7. In 1987 the applicant's parents and the applicant and his family were settled in a two-room municipally-owned flat.

8. In 1991 the plans for the construction of the building where the future flats offered in compensation were to be located were cancelled.

9. The expropriated house was pulled down and the construction works on the plot of land started on an unspecified date.

10. In February 1996 the applicant's father passed away.

11. By a decision of the mayor of 10 July 1996 the applicant was allocated another flat, with a surface which was about 28 square metres bigger than the surface of the flat originally offered in compensation to him. He was not required to pay an additional amount for the bigger flat. On an unspecified date in 1996 the applicant and his family moved in that dwelling, and his mother continued occupying the municipally-owned flat.

12. In the years that followed the applicant filed numerous requests with the authorities, asking them to find a suitable two-room flat to be provided to him and his mother in lieu of the one which had initially been due. On several occasions before 2001 the BSDC proposed flats but the applicant and his mother turned them down, either because they were not in the vicinity of the expropriated property or because they were not self-contained dwellings.

13. On 10 June 2004 the applicant requested that the mayor of Sofia offer as compensation one of the several flats in the vicinity of the expropriated property managed by the Ministry of Foreign Affairs, successor to the BSDC. The request was made in accordance with section 103 (5) of the TUPA providing for the so-called re-compensation (*преобезщетяване*). As no response followed, the applicant lodged an appeal against the mayor's tacit refusal. The Ministry of Foreign Affairs also participated in the proceedings. In a final judgment of 9 April 2008 the Supreme Administrative Court quashed the tacit refusal and remitted the case back to the mayor for examination of the request. It held that it was the duty of the mayor, and not of the Ministry of Foreign Affairs, to provide a flat to the heirs of the applicant's father.

14. It appears that even after that judgment the mayor never took a decision on the applicant's request for re-compensation.

15. In the meantime, the applicant's mother was evicted from the municipally-owned flat she had been occupying. In 2007 she died, whereupon the applicant became the sole owner of the future flat allocated in compensation to his father for the 1987 expropriation.

16. In 2014, after the present application's communication to the Government, the applicant was requested to file once again with the Sofia mayor a formal re-compensation request. He did so on 4 August 2014. It is unclear whether any decision on the matter has been taken after that.

II. RELEVANT DOMESTIC LAW AND PRACTICE

17. 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

18. The applicant complained, relying on under Article 1 of Protocol No. 1 and Article 13 of the Convention, of the failure of the State to provide him with the flat allocated in compensation to his father. The Court is of the view that it suffices to examine the application under Article 1 of Protocol No. 1, 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."

19. The Government pointed out that the authorities had made efforts to find a flat for the applicant and his mother, but the latter had turned down all proposals.

20. The applicant reiterated his complaints. He pointed out that all flats offered to him and his mother had been unsuitable and, moreover, no attempts to find another flat had been made after 2001. He considered in addition that the authorities had resisted his attempts to make them discharge their obligation, as seen from the fact that he had had to initiate judicial proceedings.

21. 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.

22. 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).

23. As in these cases (see, for example, *Kirilova and Others*, § 104, and *Antonovi*, § 28), the Court is of the view that the 1987 expropriation decision, stating that the applicant's father was to receive a two-room flat in compensation (see paragraph 5 above), created an entitlement for him, respectively for the applicant as his heir, 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).

24. 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).

25. The entitlement for the applicant's father, respectively the applicant, to receive a flat arose in 1987. That flat has not yet been delivered, twenty-nine years later, twenty-four of which, namely after 7 September 1992 when the Convention entered into force in respect of Bulgaria, within the Court's temporal jurisdiction.

26. In the years after 1991 when the plans concerning the building where the flat was to be located were cancelled, the BSDC made efforts to find another suitable flat for the applicant and his mother, without success as the flats offered were apparently inappropriate and the Government have not disputed this fact (see paragraphs 12 and 19 above). No attempts to find a new flat were made after 2001 when, on an unspecified date, the BSDC was dismantled and the obligation to provide a flat to the applicant and his mother passed to the Sofia municipality. It is also significant that the municipality remained passive even when addressed with a formal re-compensation request by the applicant, and still after the courts in their decisions given in the judicial-review proceedings initiated by the applicant had obliged it to take action (see paragraphs 13-14 above). Lastly, it is unclear whether any answer has been given to the applicant's 2014 fresh re-compensation request (see paragraph 16 above).

27. 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 adopted a passive attitude, even when ordered by the courts to take action, leaving the applicant, as his father's heir, in a state of uncertainty as to whether and when he would receive the compensation due to him. 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).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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

30. The Government submitted a valuation report prepared by an expert, assessing the market price of the flat due to the applicant at 52,600 euros (EUR).

31. For pecuniary damage the applicant claimed, in the first place, that the authorities deliver to him a flat equivalent to the one described in the decision of 15 April 1988 (see paragraph 6 above). Failing that, he claimed the flat's market value, as assessed in the report submitted by the Government.

32. The applicant also claimed compensation for the impossibility to use the flat due to him after 7 September 1992 when the Convention had entered into force for Bulgaria. Considering that he would have been able to rent it out, seeing that he owned another flat where, if necessary, his mother could have lived with his family, he claimed the market rent for a flat such as the one due to his father, adjusted to account for current prices. In support of this claim he submitted a report by an expert appointed by him, which took into account the following circumstances: that the applicant's parents, later on his mother, had been accommodated free of charge in a municipally-owned dwelling; that the applicant would have experienced delays in finding suitable tenants; and that he would have incurred expenses for the taxes due and to maintain the property. On the basis of these considerations the expert assessed the losses incurred by the applicant between September 1992 and September 2014 at EUR 14,699. Accordingly, this was the amount claimed by the applicant under the present head.

33. Lastly, the applicant claimed EUR 3,500 for non-pecuniary damage.

34. The Government contested the claims. They urged the Court to reduce appropriately any amount it was prepared to award for the flat's market value on the ground that when the applicant had himself received the flat due to him in 1996, it had been larger than the one initially promised, and the applicant had not been requested to pay for the difference (see

paragraph 11 above). The Government considered the applicant's remaining claims exaggerated.

35. The Court is of the view, as regards the damage stemming from the continuing failure of the authorities to deliver the flat due to the applicant, that 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 a flat equivalent to the one described in the decision of 15 April 1988 (see paragraph 6 above).

36. 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). The Court does not agree with the Government's argument that that sum should be reduced to account for the fact that the applicant himself received a bigger flat in 1996, noting that the two properties were distinct, and were allocated initially to different persons; if it so happened that after the death of his parents the applicant remained the sole person entitled to claim the flat allocated to his father, he should not be penalised for this fact. Moreover, it has never been argued at the domestic level that the provision of a bigger flat to the applicant meant that the authorities' obligation to deliver another flat had been partially discharged.

37. The parties are not in dispute as to the current market value of the flat at issue, which has been assessed at EUR 52,600 (see paragraph 30 above). Accordingly, the Government should pay in compensation that amount, plus any tax that may be chargeable.

38. Concerning the damage sustained on account of the impossibility to use and enjoy the flat at issue, the applicant claimed lost rent, adjusted to account for current prices (see paragraph 32 above). The Court has doubts as to whether the applicant's parents, respectively the applicant, would have indeed rented out the flat due to them, as it appears likely that during much of the period at issue, before the parents' deaths (the applicant's father passed away in 1996 and his mother in 2007 – see paragraphs 10 and 15 above), they would have lived in it as they did not own alternative dwelling. Accordingly, the Court considers the amount claimed the applicant excessive. Nevertheless, it agrees that the applicant's parents, respectively the applicant, suffered some loss of opportunity on account of not being able to use and enjoy the flat due to them over a substantial period of time (see *Kirilova and Others* (just satisfaction), cited above, § 33). Ruling in equity, the Court awards the applicant EUR 10,000 under the present head.

39. Lastly, considering that the applicant must have experienced frustration as a result of the authorities' failure to deliver the flat and of their reluctance to solve the problem for such a lengthy period of time, the Court finds it appropriate to award the applicant EUR 3,000 for non-pecuniary damage.

B. Costs and expenses

40. The applicant also claimed EUR 886 for the costs and expenses incurred before the Court, including his lawyer's fees, the cost for the expert report provided in support of his claim for pecuniary damage (see paragraph 32 above) and postage. He presented the necessary receipts.

41. The Government contested the claims.

42. Regard being had to the documents in its possession and to the circumstances of the case, the Court awards the entire amount claimed by the applicant, considering that the costs and expenses claimed were actually and necessarily incurred and are reasonable as to quantum.

C. Default interest

43. 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 his father by the decision of 15 April 1988;

4. *Holds* that, failing such delivery, the respondent State is to pay the applicant, within the same period of three months, EUR 52,600 (fifty-two thousand and six hundred euros);

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 10,000 (ten thousand 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 886 (eight hundred and eighty-six euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

6. *Holds* 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;

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

Done in English, and notified in writing on 10 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin
Acting Deputy Registrar

Khanlar Hajiyev
President