

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

FIFTH SECTION

CASE OF KOSTOV v. BULGARIA

(Application no. 3851/13)

JUDGMENT

STRASBOURG

16 March 2017

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



In the case of Kostov v. Bulgaria,

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

Faris Vehabović, *President,*
Carlo Ranzoni,
Lətif Hüseynov, *judges,*

and Anne-Marie Dougin, *Acting Deputy Section Registrar*,

Having deliberated in private on 21 February 2017,

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

PROCEDURE

1. The case originated in an application (no. 3851/13) 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 Marin Tsvetanov Kostov ("the applicant"), on 12 December 2012.

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

3. On 10 January 2014 the complaint concerning the continued failure of the authorities to provide compensation to the applicant for his father's 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 1956 and lives in Sofia.

5. The applicant's father co-owned a plot of land and a house in Sofia.

6. By a decision of the mayor of 15 July 1981 the property was expropriated with a view to constructing residential buildings. The decision, based on section 98 (1) of the Territorial and Urban Planning Act of 1973 (*Закон за териториалното и селищно устройство*), provided that the applicant's father and the applicant were to receive a three-room flat in compensation.

7. By a supplementary decision of 25 March 1987, based on section 100 of the Territorial and Urban Planning Act, the mayor determined the exact location, size and other details in respect of the future flat offered in

compensation. It was to have a surface of 109 square metres and was identified as flat no. 17 on the fifth floor of a residential building which was to be constructed by a State-owned enterprise. Lastly, it was decided that the flat would be given directly to the applicant.

8. In 1989 the applicant paid to the authorities the part of the value of the future flat which had not been covered by the value of the expropriated property. In 1990 the Sofia municipality settled him temporarily in a flat which was property of the State-owned enterprise B.

9. On an unspecified date the construction of the building where the flat was to be located was commenced. In 1996 the Sofia municipality concluded a contract with the company B., successor of the State-owned enterprise, delegating to it the construction works. The company was under an obligation to build, at its own expense, and deliver to the municipality, within twenty-four months, the flats earmarked for compensation of the expropriated owners; in exchange of that it was to become the owner of the remainder of the building.

10. However, the construction was not completed within the deadline set. In 2005, in the context of the winding-up of the company B., the building, still unfinished, was sold to another company. The latter apparently resold the property to a third company, which in 2006 obtained a notary deed declaring it the owner of the building and the flats in it, including one half of flat no. 17 on the fifth floor; however, unlike what was indicated in the decision of 25 March 1987 (see paragraph 7 above), that flat was described as having a surface of 91, and not 109, square metres. The applicant submitted a certificate of occupancy of the building at issue, dated 5 October 2007, but claimed that it only concerned “certain construction activities” and that the building was not in use.

11. In the meantime, the applicant filed several requests with the municipal authorities in Sofia asking them to complete the compensation procedure and deliver the flat due to him. In a letter of 25 July 2000 the municipality informed him that the company B. had reassured the authorities that it was making effort to fulfill its obligations. In another letter of 13 August 2004 the municipality informed the applicant that it was the company that was responsible to deliver the flat to him. Lastly, in a letter of 8 November 2011 the Sofia municipality informed the applicant that he should have raised his claims in the winding-up procedure of the company B., or should contact the current owner of the building to claim the flat due to him.

12. In 2007 the applicant was evicted from the flat where he had been temporarily settled, after it had been sold to a private party in the context of the winding-up of the company B. In the ensuing judicial proceedings whereby he challenged unsuccessfully the eviction it was established that at that time the applicant was not living in the flat, and that it was uninhabitable and in a very poor state of repair.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. 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

14. The applicant complained under Article 1 of Protocol No. 1 that the authorities failed for many years to provide the flat that was due to him in compensation for his father's expropriated property.

15. 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."

16. The Government contested the complaint. They argued that the applicant had failed to exhaust the available domestic remedies, as he had had at his disposal "several options to pursue in court the responsible municipal and private entities". In addition, without submitting or referring to any evidence, the Government claimed that the applicant had already been provided with the flat due to him.

17. The applicant, on his part, claimed that he had received no compensation whatsoever, and pointed out that he had paid in the value of the flat due to him already in 1989.

18. The Court observes that the Government's inadmissibility plea based on non-exhaustion of domestic remedies (see paragraph 16 above) is too vague and unclear. It thus dismisses it.

19. It notes further that 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.

20. 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) and a number of follow-up cases (see, for example, *Lazarov v. Bulgaria*, no. 21352/02, 22 May 2008; *Antonovi v. Bulgaria*, no. 20827/02, 1 October 2009; and *Dichev v. Bulgaria*, no. 1355/04, 27 January 2011).

21. As in the previous cases (see, for example, *Kirilova and Others*, § 104, and *Antonovi*, § 28, both cited above), the Court is of the view that the decisions of 15 July 1981 and 25 March 1987 stating that the applicant was to receive a flat in compensation for his father's expropriated property (see paragraphs 6 and 7 above) created an entitlement in his favour, which has not been disputed by the authorities and qualifies as a "possession" within the meaning of Article 1 of Protocol No. 1. The prolonged failure on the part of the authorities to provide the flat at issue amounts to an 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 the peaceful enjoyment of property (see *Kirilova and Others*, § 105, and *Lazarov*, § 28, both cited above).

22. To ascertain whether or not 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. It is to take into account, in particular, the length of the delay in the provision of compensation, the conduct of the parties, and whether or not the authorities demonstrated willingness to resolve the problem (see *Kirilova and Others*, cited above, §§ 106 and 123).

23. The entitlement in favour of the applicant to be provided with a flat arose in 1981 and was confirmed in 1987. However, the Court will only take into account the period which is within its temporal jurisdiction, namely after 7 September 1992 when Protocol No. 1 entered into force in respect of Bulgaria.

24. The parties disagreed as to whether the applicant had been provided with the flat due to him. The Government claimed that he had, while the applicant disputed this fact, explaining that the 2007 certificate of occupancy of the building where his flat was located only concerned "certain construction activities" (see paragraphs 10 and 16 above).

25. The Court, on its part, accepts the applicant's assertion. It observes that the Government have not relied on any documents in order to substantiate their claim that the compensation due to the applicant had been provided to him, that is that he had received the actual possession of the flat promised to him in 1987. Moreover, the Sofia municipality, which is the entity directly responsible for providing compensation to the applicant, never claimed that the flat had already been given to him, in particular in their letter to him dated 8 November 2011 (see paragraph 11 above). Lastly, the Court notes that in 2006 a private company was recognised as the owner of part of that flat (see paragraph 10 above), and it has not been shown that that recognition has been invalidated.

26. Accordingly, the Court concludes that the compensation proceedings concerning the applicant are still pending and that the applicant has not received the compensation due to him, thirty-six years after the

expropriation of his father's property in 1981, twenty-five of which, after 1992, within the Court's temporal jurisdiction.

27. That period is clearly excessive, and the authorities have presented no justification for such a lengthy delay in providing compensation to the applicant. In particular, the Court points out that the Sofia municipality's decision to delegate the construction of the building where the applicant's flat was to be located to a company, which then failed to comply with the obligation it had undertaken (see paragraphs 9-10 above), cannot absolve it from its own obligations. Nor can the Court accept that the applicant should have been expected to claim the compensation due to him by the authorities from private entities, as suggested in the municipality's letter to him of 8 November 2011 (see paragraph 11 above).

28. 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, as noted above, those authorities sought to evade responsibility, by referring the applicant to private entities, and otherwise adopted a mostly passive attitude, leaving the applicant in a state of uncertainty as to whether and when he would receive the compensation to which he was entitled. To this must be added the lack of effective domestic remedies for rectifying the situation (see *Kirilova and Others*, §§ 121 and 123, *Antonovi*, § 30, and *Dichev*, § 30, all cited above). The above means that the authorities failed to strike a fair balance between the general interest and the applicant's rights, as required under Article 1 of Protocol No. 1.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. Under the head of pecuniary damage, the applicant claimed that the national authorities be ordered by the Court to return to him his father's expropriated property and provide to him the flat due to him, as described in the decision of 25 March 1987. He claimed in addition compensation amounting to EUR 120,000. Alternatively, the applicant claimed only the flat due to him, once again as described in the decision of 25 March 1987, and compensation amounting to EUR 250,000.

32. For non-pecuniary damage, the applicant claimed EUR 200,000.

33. The Government contested the claims, considering them "largely exaggerated".

34. The Court observes, at the outset, that there is no legal ground for it to order the authorities to quash the expropriation and return to the applicant his father's former property. It notes in addition that it cannot order the authorities to provide to the applicant the flat described in the decision of 25 March 1987, as such a flat, with a surface of 109 square metres, apparently does not exist, flat no. 17 on the fifth floor in the building at issue measuring 91 square metres (see paragraphs 7 and 10 above).

35. Accordingly, the Court considers that, as regards the damage stemming from the continuing failure of the authorities to deliver the flat due to the applicant, 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 25 March 1987.

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 parties have made no submissions as to that value. The Court, having regard to information available to it as to the property market in Sofia, assesses it at EUR 82,000. Accordingly, the Government should pay in compensation that amount.

37. In addition, as regards the applicant's remaining claims in respect of pecuniary damage, the Court understands that the applicant claims compensation for the damage sustained on account of the impossibility for him to use the flat due to him over a lengthy period of time. The Court agrees that the applicant must have suffered such damage (see *Kirilova and Others* (just satisfaction), cited above, § 33) and, ruling in equity, awards him EUR 10,000 under this head.

38. 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 4,000 for non-pecuniary damage.

B. Costs and expenses

39. The applicant also claimed 4,231 Bulgarian levs (BGN), the equivalent of approximately EUR 2,160, for the costs and expenses incurred in the domestic proceedings whereby he challenged his eviction from the flat where he had been temporarily settled in 1990 (see paragraph 12 above).

40. For the proceedings before the Court, the applicant claimed BGN 43.40, the equivalent of EUR 22, for postage. In support of this claim he submitted the relevant receipts.

41. The Government contested the claims.

42. Regard being had to the documents and the information in its possession, the Court rejects the claim for costs and expenses in the domestic proceedings. It notes that those proceedings concerned a dwelling where the applicant was not living at the time (see paragraph 12 above), which means that in the proceedings at issue he was not attempting to alleviate the situation he was placed in due to the prolonged failure of the authorities to provide the flat which was due to him, and was not thus seeking to prevent the consequences of the breach of his rights found in the present case.

43. On the other hand, the Court finds it justified to award the expenses made in the proceedings before it, in the amount of EUR 22 (see paragraph 40 above).

C. Default interest

44. 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 him by the decision of 25 March 1987;

4. *Holds* that, failing such delivery, the respondent State is to pay the applicant, within the same period of three months, EUR 82,000 (eighty-two thousand euros);

5. *Holds* that the respondent State is in addition 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 4,000 (four thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 22 (twenty-two 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 16 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin Acting Deputy Registrar	Faris Vehabović President