

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

FIFTH SECTION

CASE OF KOVACHEV v. BULGARIA

(Application no. 65679/11)

JUDGMENT

STRASBOURG

10 November 2016

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



In the case of Kovachev 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. 65679/11) 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 Dimitar Iliev Kovachev ("the applicant"), on 28 September 2011.

2. The applicant was represented by Mr G. Dimov, a lawyer practising in Yambol. The Bulgarian Government ("the Government") were represented by their Agent, Mr V. Obretenov, 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 1955 and lives in Yambol.

5. The applicant and his brother co-owned a house with a yard and a garage in Yambol.

6. By a decision of the mayor of 31 January 1983 the property was expropriated with a view to constructing a residential building. 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 and his brother were to be compensated with flats in a building which the municipality intended to construct.

7. On an unspecified date the flats were constructed and delivered to the applicant and his brother.

8. On 13 July 1994 the mayor modified the decision of 31 January 1983, stating that the two brothers were also to be compensated with a common

garage. The applicant's brother informed the mayor that he renounced his right to compensation with a garage in the applicant's favour.

9. By a supplementary decision of 30 May 1995, based on section 100 of the TUPA, the mayor held that the applicant was to be compensated with the right to build a garage on a municipal land and determined the exact location of the future garage. The applicant did not appeal against that decision and apparently prepared to start the construction works.

10. By a decision of 9 October 2002 the mayor modified the previous decision of 30 May 1995, indicating another municipal plot of land where the future garage was to be built, as it had turned out that the previous one was not owned by the municipality. That decision was not appealed against by the applicant, but was eventually set aside by the Yambol regional governor after it had been contested by third persons.

11. On an unspecified date in 2010 the applicant brought a tort action against the Yambol municipality, claiming a wrongful failure on its part to provide him with a garage. The action was dismissed, the final judgment being given by the Supreme Administrative Court on 30 March 2011. The domestic courts held that no unlawful inactivity on the part of the authorities had been established, neither had it been shown that the applicant had sustained any damage.

12. In June 2011 the applicant agreed to receive compensation in cash in lieu of the garage due to him. It appears that the municipality had been offering such a solution since 2007. The compensation in cash was paid to the applicant on 4 April 2012.

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 of the authorities' prolonged failure to provide him with compensation for his expropriated property, 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."

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. Similarly to these cases (see, for example, *Kirilova and Others*, § 104, and *Antonovi*, § 28), the Court is of the view that the decision of 13 July 1994, stating that the applicant was to receive a garage in compensation (see paragraph 8 above), created an entitlement for him, 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' prolonged failure to provide that garage or other equivalent compensation 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 or incapability to resolve the problem, are factors, among others, that can upset that balance (see *Kirilova and Others*, cited above, § 123).

19. The applicant's entitlement to receive a garage arose in 1994, and he was paid compensation in cash in 2012, namely eighteen years later. Such a long period of time appears clearly excessive (see *Dichev*, cited above, § 28).

20. During that period the authorities made attempts to discharge their obligation, as on two occasions the mayor took decisions under section 100 of the TUPA, specifying the compensation to be provided to the applicant and aimed at finalising the compensation procedure. However, the first of these decisions could not be enforced, and the second one was eventually quashed (see paragraphs 9-10 above). No workable solution was therefore proposed until 2007, when the authorities offered to the applicant

compensation in cash (see paragraph 12 above). Even though he only accepted it in 2011, the Court does not consider that he should be blamed for the delay after 2007, as he was in principle not obliged to agree to a different means of compensation.

21. In cases such as the present one it is incumbent on the authorities to act in good time, and in an appropriate and consistent manner. Instead, for many years they remained inactive, or were otherwise incapable of finding an acceptable solution, 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. 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).

22. There has accordingly been a breach of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. In respect of pecuniary damage, the applicant claimed 5,237 Bulgarian levs (BGN), the equivalent of 2,670 euros (EUR), for loss of opportunities due to the impossibility to use the garage due to him over a lengthy period of time. The claim was based on an expert report prepared in the context of the tort proceedings brought by the applicant (see paragraph 11 above), calculating the rent which would have been due for such a garage between January 1983 and June 2010.

25. The applicant also claimed EUR 2,000 for non-pecuniary damage.

26. The Government contested the claims.

27. As regards pecuniary damage, the Court is of the view that the applicant must have suffered a certain loss of opportunity on account of not being able to use and enjoy the garage due to him over a substantial period of time. However, it is unable to follow entirely the method of calculation of this loss suggested by him, for several reasons. Firstly, the "period of damage" did not start in 1983, but on 13 July 1994 when a decision to compensate the applicant with a garage was taken by the mayor (see paragraph 8 above). It is noteworthy in addition that the applicant only claimed compensation for the period until 2010. Secondly, it is unclear

whether the applicant would have let the garage out, or would have used it himself. And 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 (see *Kirilova and Others* (just satisfaction), §§ 28-30, and *Dichev*, § 43, both cited above). Having regard to the number of imponderables thus involved, the Court considers that it must rule in equity and awards the applicant EUR 1,500 under the present head.

28. As to non-pecuniary damage, the Court, taking into account the circumstances of the case, awards the applicant's claim (see paragraph 25 above) in full.

B. Costs and expenses

29. The applicant also claimed BGN 1,000, the equivalent of EUR 510, for his legal representation before the Court. In support of this claim he presented a contract for legal representation. He requested that that sum be paid directly to his lawyer, Mr G. Dimov.

30. The applicant claimed another BGN 1,105, the equivalent of EUR 564, for the costs and expenses incurred in the proceedings initiated by him before the domestic courts (see paragraph 11 above). He presented receipts justifying some of these expenses, while the remainder represented the court costs incurred by the other party which he had been ordered to pay.

31. The Government contested the claims.

32. Regard being had to the documents in its possession and to the circumstances of the case, the Court allows the applicant's claims in full. It notes in particular that the expenses in the domestic proceedings were incurred while the applicant sought to obtain redress for the violation of his rights found in the case. All costs and expenses appear in addition to have been actually and necessary incurred and are reasonable as to quantum.

33. As requested by the applicant, EUR 510 awarded for his legal representation before the Court are to be paid directly to his lawyer.

C. Default interest

34. 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*
   (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 1,500 (one thousand and five hundred euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,074 (one thousand and seventy-four euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, EUR 510 (five hundred and ten euros) of which to be paid directly to the applicant's legal representative;
   (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;

4. *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