

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

FIFTH SECTION

CASE OF KOVACHEVA v. BULGARIA

(Application no. 2423/09)

JUDGMENT

STRASBOURG

10 November 2016

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Kovacheva 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. 2423/09) 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 Violetka Moyuva Kovacheva ("the applicant"), on 26 November 2008.

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

3. On 26 May 2014 the complaint concerning the delay on the part of the authorities in providing a flat to the applicant in compensation for her 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 1948 and lives in Sofia.

5. The applicant was one of the co-owners of a house with a yard in the town of Troyan.

6. By a decision of the mayor of 15 March 1983 the property was expropriated with a view to constructing residential and administrative 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"), provided that the applicant was to be compensated with a three-room flat in a building which the municipality intended to construct.

7. By a supplementary order of 27 March 1990, based on section 100 of the TUPA, the mayor determined the exact location, size and other details in respect of the future flat to be offered to the applicant.

8. The applicant and the other owners continued occupying the expropriated house. Even though the applicant lived in Sofia, she apparently continued to keep in it possessions of hers.

9. The building where the applicant's flat was initially to be located was finished in 2003, but it was smaller than originally planned and no flat in it could be offered to the applicant. The reason for the change of plans, which had been decided upon in 1995, was the restitution of part of the land earmarked for the construction to its previous owners, under restitution legislation adopted in 1992.

10. In April 2001 the municipality issued a building permit for a new building with flats, to be situated on the plot of land where the applicant's expropriated house was still standing. The permit was renewed in 2004, 2007 and 2010. In the meantime, construction plans were approved, and towards the end of 2003 the municipality allocated the flats to their future owners. On the basis of that distribution, on 13 January 2004 the mayor issued a new decision under section 100 of the TUPA in respect of the applicant, revoking the previous decision of 27 March 1990 (see paragraph 7 above) and indicating the exact flat in the new building to be provided to her in compensation. The newly allocated flat measured 94 square metres, slightly bigger in size than the one offered in 1990.

11. Nevertheless, dissatisfied with the decision of 13 January 2004, the applicant challenged it before the courts, claiming that it impermissibly modified the 1990 decision dealing with the same matter. The proceedings continued until 20 November 2007 when, in a final judgment, the Supreme Administrative Court dismissed the applicant's application for judicial review.

12. In the meantime, in 2005 the applicant made a request to the mayor, seeking the revocation of the 1983 expropriation order in respect of her share of the property. As no response followed, she applied for the judicial review of the mayor's tacit refusal. The ensuing proceedings were initially stayed to await the outcome of those described in the previous paragraph. Once they were resumed, in a final judgment of 24 July 2009 the Supreme Administrative Court dismissed the application for judicial review, finding that the preconditions for restitution had not been met.

13. On 13 and 28 August 2009 the mayor ordered the applicant's eviction from the expropriated house and that the house be pulled down. The applicant applied for the judicial review of both orders. The first one was upheld by the courts in a final judgment of 14 February 2011, and the second one on 20 April 2010. Meanwhile, in September 2009 the applicant was evicted.

14. The house was pulled down on an unspecified date, after which the municipality selected a company to carry out the construction works on the site, which started in April 2011. In the meantime, the applicant contested before the courts the 2001 building permit (see paragraph 10 above) concerning the building to be constructed, but was unsuccessful.

15. The building was finished in 2014 and in July 2014 the applicant was invited to receive the keys to her flat. She refused to do so and instead of that challenged before the courts the authorization for the building to be used, claiming in particular that the construction had not been of sufficient quality. The course of these proceedings is unclear.

II. RELEVANT DOMESTIC LAW AND PRACTICE

16. 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

17. The applicant complained under Article 1 of Protocol No. 1 that the authorities had delayed providing her with compensation for her expropriated property. 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."

18. The Government argued that the applicant was herself to blame for much of the delay, as she had on numerous occasions challenged different decisions related to the process of compensation. They submitted an explanation note prepared by the mayor of Troyan, who stated that the applicant's actions had effectively delayed the construction of the building where the flat to be provided to her was to be located, as it had been necessary to await the outcome of the different procedures initiated by her, most notably the one related to the attempted restitution of the expropriated property (see paragraph 12 above) and the one whereby the applicant had challenged her eviction (see paragraph 13 above). Thus, the Government

argued that the municipal authorities in Troyan had not remained passive in the manner criticised by the Court in the similar case of *Kirilova and Others* (cited above, § 109). Lastly, the Government contended that the applicant had not suffered any special hardship due to the delayed provision of compensation, because she lived in Sofia and in any event had been allowed to use her expropriated house until 2009.

19. The applicant reiterated her complaint, claiming, in submissions made in December 2014, that the compensation procedure had not yet been finalised.

20. 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.

21. 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).

22. As in these cases (see, for example, *Kirilova and Others*, § 104, and *Antonovi*, § 28), the Court is of the view that the 1983 expropriation decision, stating that the applicant was to receive a three-room flat in compensation (see paragraph 6 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 delay on the part of the authorities in providing 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).

23. 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. It will have regard, among other things, to 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).

24. The applicant's entitlement to receive a flat arose in 1983 when her property was expropriated (see paragraph 6 above). However, the Court will only take into account the period after 7 September 1992, the date on which Protocol No. 1 entered into force in respect of Bulgaria. The period to be examined ended in 2014, when the flat was constructed and the municipal authorities in Troyan invited the applicant to receive the keys. Even though she has refused to do so, the Court is of the view that the municipal authorities have discharged their obligation and that there is no ground to

consider the procedure still pending; as to the question raised by the applicant of the quality of the construction works (see paragraph 15 above), it can be addressed in different proceedings. The relevant delay in providing compensation to the applicant was thus twenty-two years.

25. The Court agrees with the Government that much of this delay after 2004 was caused through actions of the applicant, who continually contested before the courts the authorities' decisions related to the construction of the flat due to her (see paragraphs 11-14 above). While she evidently did have the right to do so, it cannot be denied that this caused substantial delay, as the authorities had to await the end of these proceedings, one after another, before being able to proceed with the construction plans (see paragraph 18 above). As a result, even though it appears that the municipality was prepared to start the construction as early as 2003-2004 when the construction plans were approved and the future flats were allocated to their owners (see paragraph 10 above), actual construction could only commence in 2011 (see paragraph 14 above).

26. Nevertheless, the Court observes that while the applicant was responsible for much of the delay accrued after 2004, the municipal authorities were under the obligation to provide a flat to her as early as in 1992. Moreover, already in 1995 they were aware that the flat offered to her initially could not be constructed (in that year the original construction plans were modified, see paragraph 9 above). Still, it took them years to find an alternative solution. The Government have not provided any justification for that substantial initial delay; the Court will not thus speculate on the matter.

27. Mindful of the subsequent delays caused by the applicant's actions, as discussed above, the Court finds however that the initial delay of twelve years (1992-2004), for which no justification has been provided, is sufficient for it to conclude that the applicant has had to suffer a special and excessive burden (see *Kirilova and* Others, cited above, §§ 109 and 123 – one of the cases examined there concerned a similar delay of twelve years). As to the Government's argument (see paragraph 18 above) that any hardship suffered by her was moderated by the fact that she lived in Sofia and not in Troyan and had been allowed to use her expropriated house until 2009, the Court will take these circumstances into account below when examining the applicant's claims under Article 41; they are however insufficient for it to conclude that the authorities' inactivity before 2004 did not upset the fair balance between the general interest and the applicant's rights required under Article 1 of Protocol No. 1 (see paragraph 23 above).

28. The foregoing considerations are sufficient to enable the Court to conclude that there has been in the present case a breach 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. For pecuniary damage, the applicant claimed 17,484 Bulgarian levs (BGN), the equivalent of 8,920 euros (EUR) for the "right of use and lost profit" of the flat due to her for the period from November 2007 to June 2014, plus BGN 13,226.36, the equivalent of EUR 6,750, for interest for the same period of time. In support of that claim she presented an expert report calculating the rent she could have received from the flat and the relevant interest.

31. For non-pecuniary damage, the applicant claimed EUR 2,000.

32. The Government contested the claims, pointing out that the applicant had not suffered any special hardship as a result of the delay in providing her with compensation, and that she had largely contributed to that delay. As concerns specifically the claim for pecuniary damage, the Government were of the view that the Court should not award the applicant any lost rent, expressing doubt as to whether she would have been able to rent out the flat due to her. They provided statistical data from 2011 showing an important share of uninhabited dwellings in Troyan and its surroundings, and argued that in this rather small town the demand for flats to rent was almost non-existent.

33. The Court is of the view that it is justified to award pecuniary damage to the applicant on account of the impossibility to use and enjoy the flat due to her over a lengthy period of time. However, it is unable to accept the method suggested by her, based on lost rent. Even if it is realistic to assume that the applicant would have attempted to rent out the flat due to her, as she lived in Sofia and not in Troyan, she would have inevitably experienced delays in finding suitable tenants, which, as also seen on the basis of the data provided by the Government, could have been substantial. In addition, even if she did possibly find tenants, the applicant would have inevitably incurred expenses to maintain the property, and would have been subject to taxation on any rent (see *Kirilova and Others* (just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 31, 14 June 2007, §§ 28-30, and *Dichev*, cited above, § 43). Taking into account these considerations, and the fact discussed above (see paragraph 25) that the applicant was responsible for much of the delay in the compensation

proceedings after 2004, the Court considers it equitable to awards her EUR 2,000 under the present head, plus any tax that may be chargeable.

34. Taking into account the circumstances of the case, the Court awards in addition EUR 1,500 to the applicant in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

35. The applicant also claimed BGN 602, the equivalent of EUR 307, for the expert report submitted in support of her claim for pecuniary damage (see paragraph 30 above), as well as for another report submitted by her concerning properties in respect of which her complaints have been found by the Court to be inadmissible (see paragraph 3 above). She claimed in addition BGN 93.40, the equivalent of EUR 48, for postage. In support of these claims the applicant presented the necessary receipts.

36. The Government contested the claims, considering in particular the expenses for expert reports irrelevant.

37. The Court observes that the applicant presented two expert reports, one of which, as already noted, unrelated to the complaint under examination. Accordingly, the Court allows only partially the applicant's claim in respect of the cost of these reports, awarding her EUR 150.

38. In addition, the Court finds it justified to award the applicant the expenses made for postage, in the amount of EUR 48 (see paragraph 35 above).

C. Default interest

39. 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 2,000 (two thousand euros euros), plus any tax that may be chargeable, in respect of pecuniary damage;
(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
(iii) EUR 198 (one hundred and ninety-eight euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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