

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

FIFTH SECTION

CASE OF MIHAYLOV v. BULGARIA

(Application no. 50371/09)

JUDGMENT

STRASBOURG

13 October 2016

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



In the case of Mihaylov 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 Milan Blaško, *Deputy Section Registrar,*

Having deliberated in private on 20 September 2016,

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

PROCEDURE

1. The case originated in an application (no. 50371/09) 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, Mr Krastyu Vasilev Mihaylov ("the applicant"), on 29 April 2009.

2. The applicant passed away on 18 November 2013 and his heirs, his wife Kalinka Vasileva Mihaylova and his son Vasil Krastev Mihaylov, expressed the wish to pursue the application in his stead.

3. The applicant was represented by Ms S. Stefanova and Mr A. Atanasov, lawyers practising in Plovdiv. After the applicant's death Ms Stefanova also represented his heirs. The Bulgarian Government ("the Government") were represented by their Agent, Ms Y. Stoyanova, of the Ministry of Justice.

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

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1927.

6. He owned a house with a yard in Plovdiv, which were expropriated in 1982 on the basis of section 98 (1) of the Territorial and Urban Planning Act of 1973 (*Закон за териториалното и селищно устройство*) with a view to constructing a residential building. The expropriation decision stated that the applicant was to be compensated with a two-room flat and a garage in a building which the municipality intended to construct.

7. On an unspecified date the flat due in compensation was constructed and delivered. However, the applicant never received the garage which had also been due to him.

8. In April 2008 the applicant complained to the Plovdiv municipality of the failure to provide him with a garage. By a letter of 11 June 2008 the deputy mayor of Plovdiv informed him that the municipality had no garages available and that it was currently constructing a building with underground garages, one of which could be offered to him.

9. In February 2010 the applicant wrote once again to the municipality, and was informed in reply that the construction of the building mentioned earlier had not been completed.

10. In 2014 the municipality offered the applicants' heirs a garage, which the latter refused as it was situated at more than ten kilometers from their place of residence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. 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. PRELIMINARY ISSUE

12. The applicant passed away on 18 November 2013 and his wife and son expressed the wish to pursue the application in his stead (see paragraph 2 above). It has not been disputed that they are entitled to do so and the Court sees no reason to hold otherwise (see, among others, *Streltsov and other "Novocherkassk military pensioners" cases v. Russia*, nos. 8549/06 et al., § 36, 29 July 2010).

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1

13. The applicant complained that the authorities had failed for a lengthy period of time to provide the garage due to him in compensation for his expropriated property, and that he lacked an effective domestic remedy in that regard.

14. The applicant relied on Article 1 of Protocol No. 1 and Article 13 of the Convention. The Court is of the view that it suffices to examine the application solely under Article 1 of Protocol No. 1, which reads:

> "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. As in these cases (see, for example, *Kirilova and Others*, § 104, and *Antonovi*, § 28), the Court is of the view that the 1982 expropriation decision, stating that the applicant was to receive a garage in compensation (see paragraph 6 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' failure to provide that garage 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 payment of compensation, coupled with the authorities' unwillingness 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 1982, thirty-four years ago, twenty-four of which, namely after 7 September 1992 when the Convention entered into force for Bulgaria, within the Court's temporal jurisdiction. Such a long period appears clearly unjustified (see *Dichev*, cited above, § 28).

20. There is no indication that any of this delay was attributable to the applicant or his heirs. In particular, the heirs cannot be blamed for their refusal to accept the garage offered to them in 2014 (see paragraph 9

above), since the reason given by them, that it was far away from their place of residence, appears acceptable and adequate. At the same time, on at least two occasions, in 2008 and 2010, the applicant contacted the municipal authorities in Plovdiv, urging them to find a solution (see paragraphs 8-9 above).

21. 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, they adopted a 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. 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.

III. 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."

24. The applicant's heirs did not make claims for pecuniary damage, or in respect of costs and expenses. Accordingly, the Court considers that there is no call to award them any sums on these accounts.

25. In respect of non-pecuniary damage, the applicant's heirs claimed 20,000 euros (EUR). The Government contested the claim as exaggerated.

26. The Court considers that the applicant must have experienced frustration as a result of the authorities' prolonged failure to deliver the garage to which he was entitled and of their reluctance to solve his problem for a lengthy period of time. Ruling in equity, the Court awards EUR 2,000 in respect of non-pecuniary damage. The award is to be paid to the applicant's heirs, whose names are indicated in paragraph 2 above.

27. Lastly, 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. *Holds* that the late applicant's heirs, Kalinka Vasileva Mihaylova and Vasil Krastev Mihaylov, have standing to continue the proceedings in his stead;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;

4. *Holds*
   (a) that the respondent State is to pay jointly to the applicant's heirs, within three months, EUR 2,000 (two thousand euros), to be converted into Bulgarian levs at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount 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 claim for just satisfaction.

Done in English, and notified in writing on 13 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Khanlar Hajiyev
Deputy Registrar	President