

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

FOURTH SECTION

# CASE OF MOAMER v. BULGARIA

*(Application no. 40124/19)*

JUDGMENT

STRASBOURG

18 October 2022

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



**In the case of Moamer v. Bulgaria,**

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

Iulia Antoanella Motoc*, President,*

Yonko Grozev*,*

Pere Pastor Vilanova*, Judges,*

and Ludmila Milanova, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 40124/19) 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") on 20 July 2019 by two Bulgarian nationals, Mr Esrin Tyundzhar Moamer and Mr Zafer Tyundzhar Moamer, born in 1982 and 1981 respectively and living in Türkiye ("the applicants") who were represented by Ms A. Chobanova, a lawyer practising in Sofia;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms V. Hristova, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 27 September 2022,

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

## SUBJECT MATTER OF THE CASE

1. The application concerns the delayed provision of compensation to the applicants for their mother's property, expropriated in 1991 for urban development by the municipal authorities of Dobrich. The applicants (who succeeded their mother after she passed away on an unspecified date) were to be compensated with a flat in a building the authorities intended to construct. Construction work commenced in 2010; however, in 2014 this was postponed, apparently mainly due to financial difficulties experienced by the municipality. In November 2019 the construction work started again and, according to the Government, the building was expected to be completed by 30 July 2022. The applicants had not received their flat or any alternative compensation by the time the parties filed their last submissions with the Court in June 2022.

2. The applicants complained under Article 1 of Protocol No. 1 and Article 13 of the Convention of the delays in the compensation procedure.

# THE COURT'S ASSESSMENT

## I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 OF THE CONVENTION

3. The Court is of the view that it suffices to examine the complaints solely under Article 1 of Protocol No. 1 (see, for example, *Kopankovi v. Bulgaria*, no. 48929/12, §§ 26-27, 6 September 2018).

4. The case is of the type examined in *Kirilova and Others v. Bulgaria* (nos. 42908/98 and 3 others, 9 June 2005) and many follow-up cases (some of which are cited below). The relevant domestic law provisions and the applicable general principles concerning delays in providing compensation for expropriated property have been summarised therein.

### A. Admissibility

5. The Government argued that the applicants had failed to exhaust available and effective domestic remedies. They had brought a tort action under the State and Municipalities Responsibility for Damage Act 1988 ("the 1988 Act"), claiming compensation for the delay in providing the flat due to them, but had failed to pay the requisite court fee, after which the proceedings had been discontinued. The Government maintained that, unlike the circumstances criticised by the Court in *Kirilova and Others* (cited above, §§ 116-19), in view of the recent evolution of domestic case-law and administrative practice, the remedy in question now offered a reasonable prospect of success.

6. The applicants disagreed with those arguments. They contested the effectiveness of a tort action under the 1988 Act, arguing that the domestic courts had a divergent practice on that matter, and also that such a claim could only result in awarding compensation for a delay of five years preceding the date of its submission, in view of the relevant domestic rules on limitation periods.

7. While it takes note of the recent domestic case-law awarding damages to plaintiffs in similar cases, as presented by the Government, the Court reiterates that such an action cannot directly compel the authorities to build and deliver the flat due. It only results in providing compensation for delay for a limited period of time (see, for example, *Antonovi v. Bulgaria*, no. 20827/02, §§ 11-13, 1 October 2009, where the indemnification awarded by the courts covered a period up to the date of lodging the action). Thus, as long as the flat due remains undelivered to an applicant, the latter would be forced to lodge new actions and claim further compensation (see *Kirilova and Others*, cited above, § 116; *Antonovi*, cited above, § 24; and *Lyubomir Popov v. Bulgaria*, no. 69855/01, § 105, 7 January 2010). Therefore, an action for damages in the case at hand did not represent an effective remedy which the

applicants should have exhausted, and their failure to duly pursue the proceedings they brought cannot lead to the dismissal of their complaints for non-exhaustion of domestic remedies (see *Kirilova and Others*, cited above, §§ 116-19).

8. In addition, the Court finds 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.

## B. Merits

9. The applicants' entitlement to be provided with a flat as compensation for their mother's expropriated property arose in 1991, and they have not yet received their flat, or any alternative compensation (see paragraph 1 above). Thus, in the present case the delay is thirty years (from the entry into force of Protocol No. 1 to the Convention for Bulgaria in 1992 onwards).

10. The applicants argued that the domestic authorities were entirely responsible for the excessive delays in providing compensation, regardless of whether that was due to financial difficulties experienced by the municipality, or to negligence or a passive attitude on their part.

11. The Government maintained that the domestic authorities made active attempts to overcome financial and logistical difficulties, in order to find a solution and fulfil their obligation to provide a flat to the applicants. They contended that the municipality's financial situation had caused some delay in the compensation procedure, however, the difficulties had been largely overcome and the applicants were to receive their flat in the second half of 2022. In the Government's view, the applicants were responsible for part of the delay incurred, because they had failed to resort to procedures available to them to bring about the conclusion of the procedure at an earlier date. In particular, the applicants had not used the possibility provided for under domestic law to request financial compensation in lieu of compensation in the form of a flat, nor had they availed themselves of the possibility to seek re-compensation by way of another flat (see, for a description of these procedures, *Kopankovi*, cited above, § 22, and *Velyov and Dimitrov v. Bulgaria* (dec.) [Committee], no. 64570/10, § 16, 20 September 2016).

12. The Court observes that the Dobrich municipality never abandoned its plans to construct the building where the applicants' flat is located and actively sought financing in order to complete the construction, as noted by the Government (see paragraph 11 above). Consequently, the applicants should not be criticised for their decision to await that construction and not seek alternative solutions, such as financial compensation or compensation through other property (compare the circumstances in *Basmenkova v. Bulgaria* [Committee], no. 63391/13, §§ 28-30, 6 April 2017; by contrast, see *Bozhilovi v. Bulgaria* [Committee], no. 9051/18, §§ 9-11, 15 March 2022 and *Petrovi v. Bulgaria* [Committee], no. 26759/12, §§ 25-29, 2 February

2017, where the Court found that at some point it had become clear that the property initially due would never be delivered which meant that the applicants should have resorted to the various other means of redress available under domestic law). Therefore, the applicants' failure to pursue those avenues cannot lead to the conclusion that they are to blame for some part of the delay in the compensation procedure.

13. As to the authorities, in the present case it does not appear that they proved reluctant to assist the applicants, nor that they actively opposed the applicants' attempt to receive the flat due to them (by contrast, see *Kirilova and Others*, cited above, § 121; and *Dobrodolska v. Bulgaria* [Committee], no. 34272/09, § 20, 13 October 2016). Nevertheless, the delay caused through their fault has not been validly justified. In particular, in so far as the Government referred to the insufficient financial resources of the Dobrich municipality, the Court reiterates that this in itself cannot justify such a lengthy delay (see *Kirilova and Others*, cited above, § 122). Furthermore, the Court notes that even assuming that the applicants receive the flat due to them in the second half of 2022 (see paragraph 11 above), which has not been confirmed (see paragraph 1 above), the fact remains that for many years the applicants faced uncertainty and have had to suffer an excessive burden. Thus, even after the possible delivery of the flat, the fair balance required under Article 1 of Protocol No. 1 has not been achieved (see *Kirilova and Others*, cited above, § 123).

14. There has accordingly been a violation of Article 1 of Protocol No. 1 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. The applicants claimed non-pecuniary damage, without indicating a specific amount.

16. As for costs and expenses, the applicants claimed 1,820 euros (EUR). This included EUR 1,710 for their legal representation and EUR 110 for translation. To support their claim, the applicants presented a time sheet for the work performed by their lawyer and receipts for the amount paid for translation. They requested that EUR 210 awarded under this head be paid to their bank account and that the remainder be transferred directly to the bank account of their legal representative.

17. The Government submitted that any award for non-pecuniary damage should not exceed the amounts awarded in similar cases. They contested the applicants' claim for costs and expenses and considered it excessive.

18. The Court, ruling on an equitable basis and having regard to the circumstances of the case, awards jointly to the two applicants EUR 3,000 in respect of non-pecuniary damage.

19. Furthermore, having regard to the fact that the present case concerns a repetitive complaint and that it is part of a group of ten almost identical

applications submitted to the Court by applicants represented by the same lawyer, the Court considers it reasonable to award the applicants a global amount of EUR 900 to cover all costs incurred, plus any tax that may be chargeable to them. It holds that, as requested by the applicants, EUR 690 of this amount is to be paid directly into the bank account of their legal representative.

## 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 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicants jointly, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
   (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (ii) EUR 900 (nine hundred euros), plus any tax that may be chargeable to them, in respect of costs and expenses, EUR 690 (six hundred and ninety euros) of which to be paid directly into the bank account of the their 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 applicants' claim for just satisfaction.

Done in English, and notified in writing on 18 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Ludmila Milanova | Iulia Antoanella Motoc |
| Acting Deputy Registrar | President |