

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

FIFTH SECTION

CASE OF PETROVI v. BULGARIA

(Application no. 9504/09)

JUDGMENT

STRASBOURG

13 October 2016

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



In the case of Petrovi 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. 9504/09) 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 two Bulgarian nationals, Ms Stoyanka Kotseva Petrova and Mr Stoyan Todorov Petrov ("the applicants"), on 5 January 2009.

2. The applicants were represented by Ms N. Dobreva, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms A. Panova, of the Ministry of Justice.

3. On 10 January 2014 the complaints concerning the authorities' failure for many years to provide the applicants with a flat in compensation for expropriated property were 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 applicants were born in 1952 and 1955 respectively and live in Sofia.

5. The first applicant's parents owned part of a house in Sofia.

6. In 1986 the house was expropriated with a view to constructing a street and a residential building. The expropriation decision, based on section 98 (1) of the Territorial and Urban Planning Act of 1973 (*Закон за териториалното и селищно устройство* – "the TUPA"), provided in particular that in compensation the applicants were to receive a three-room flat.

7. By another decision of 28 May 1993, based on section 100 of the TUPA, the mayor indicated the exact future flat to be provided as compensation to the applicants. It measured 87 square metres and was situated in a building to be constructed by the Sofia municipality. Its value was set at 21,185 old Bulgarian levs (BGL), later amended to BGL 21,231. The applicants paid to the municipality the part of this amount which was not covered by the value of the expropriated property.

8. In 1990 the applicants, their children and the first applicant's parents were accommodated in a three-room municipal flat. They remained in it until 2004, when they chose to move to another dwelling better adapted for the first applicant's mother's frail state of health.

9. On an unspecified date in 2005 the applicants brought a tort action against the Sofia municipality, claiming pecuniary and non-pecuniary damage on account of its continued failure to build and provide them with a flat.

10. The action was dismissed on 21 February 2006 by the Sofia District Court, which found that the applicants had not proven that they had sustained damage, in particular because they had been accommodated in a municipally-owned dwelling, and that in any event domestic law provided for a special remedy for persons in the applicants' situation, namely the possibility to request a new valuation of the expropriated property.

11. Following that judgment, the applicants made a request for a new valuation. In a letter by the municipality dated 2 June 2006 and signed by a deputy mayor, they were informed that they were not entitled to seek such a valuation since they had not been the owners of the expropriated property.

12. In the meantime the flat due to the applicants was built and they took possession of it on 19 June 2006.

13. In the tort proceedings, in judgments of 14 December 2006 and 8 July 2008 the Sofia City Court and the Supreme Court of Cassation upheld the Sofia District Court's judgment of 21 February 2006, reiterating its findings.

14. In these proceedings the applicants were ordered to pay 1,200 new Bulgarian levs (BGN, the equivalent to 612 euros – EUR) in court fees.

II. RELEVANT DOMESTIC LAW AND PRACTICE

15. 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

16. The applicants complained that the authorities had failed for many years to provide the flat due to them, and that they had lacked an effective domestic remedy in that regard.

17. The applicants 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 complaints 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."

A. Admissibility

18. The Government objected that the applicants had failed to exhaust the available domestic remedies, because, as also noted by the domestic courts, they had not availed themselves of the possibility to seek a fresh valuation of the expropriated property (a procedure described in more detail in §§ 77-78 of the *Kirilova and Others* judgment, cited above).

19. However, the Court notes that the applicants did seek such a valuation, but were informed that they were not entitled to it because they had not been the owners of the expropriated property (see paragraph 11 above). The Government have not claimed that this statement of the municipal authorities was erroneous. In addition, the Court observes that in the case of *Kirilova and Others* (cited above, §§ 112-15) it already found that, despite this avenue of redress being in theory capable of leading to the award of monetary compensation, applicants in a situation similar to the one at hand could not be required to pursue it, in particular because it was available only in specific circumstances and because it was provided in the relevant legislation that the new valuation would still be based at the property's market price at the time of expropriation, notwithstanding the significant depreciation of the Bulgarian currency in the 1990s.

20. For the considerations above the Court dismisses the Government's objection for non-exhaustion of domestic remedies.

21. 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 ground. It must therefore be declared admissible.

B. Merits

22. 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).

23. As in these cases (see, for example, *Kirilova and Others*, § 104, and *Antonovi*, § 28), the Court is of the view that the 1986 expropriation decision, stating that the applicants were to receive a three-room flat in compensation for the expropriation (see paragraph 6 above), created an entitlement for them 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 flat amounts to interference with the applicants' 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).

24. 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 applicants' 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).

25. The applicants' entitlement to receive a flat arose in 1986 and such flat was provided to them in 2006 (see paragraphs 6 and 12 above), namely twenty years later, fourteen of which, after 7 September 1992 when the Convention entered into force for Bulgaria, within the Court's temporal jurisdiction. In the earlier similar cases the Court found that comparable delays, seen together with the authorities' passive attitude, the long periods of uncertainty endured by the applicants and the lack of effective domestic remedies for rectifying the situation, meant that the applicants had been made to bear a special and excessive burden which had upset the fair balance between the demands of the public interest and protection of the right to peaceful enjoyment of possessions (see *Kirilova and Others*, §§ 108-23, *Lazarov*, §§ 30-32, and *Antonovi*, § 30, all cited above). The Court sees no reason to reach a different conclusion in the present case.

26. It follows that there has been a violation of Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicants claimed EUR 10,000 in respect of pecuniary damage, in compensation for loss owing to the impossibility to use the flat due to them for a lengthy period of time. The amount claimed also included the court fees which the applicants were ordered to pay after their tort claim against the municipality was dismissed (see paragraph 14 above).

29. For non-pecuniary damage, the applicants claimed jointly EUR 4,000. They pointed out that the municipally-owned flat where they had been accommodated in 1990 had been of inferior quality and worse located compared to the flat they had been entitled to receive. In addition, they had been forced to leave it in 2004 because it had not been adapted to their family's needs.

30. The Government urged the Court not to make any award in respect of pecuniary damage, pointing out that pending the delivery of their flat the applicants had been accommodated for free in a municipally-owned dwelling and that they had chosen to leave it for reasons which could not be attributed to the authorities.

31. As concerns non-pecuniary damage, the Government considered the applicants' claim excessive.

32. The Court observes that indeed, as pointed out by the Government, the applicants were accommodated in a municipal dwelling pending delivery of their flat. Accordingly, until 2004 they did not incur any expenses for finding alternative accommodation. As to their decision to leave it in 2004, the Court agrees that this happened for reasons (see paragraph 8 above) which could not be imputed to the authorities.

33. Nonetheless, the Court considers that the applicants must have suffered a certain loss of opportunity on account of having been unable to use and enjoy the flat due to them over a lengthy period of time (see *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 33, 14 June 2007). Ruling in equity, it awards them EUR 7,000 under this head. As to the amount the applicants were ordered to pay in court fees, also claimed under the head of pecuniary damage, the Court will deal with it below.

34. Lastly, the Court considers that the breach of Article 1 of Protocol No. 1 must have caused the applicants non-pecuniary damage

arising out of the frustration suffered as a result of the prolonged failure of the authorities to deliver the flat to which they were entitled (ibid., § 37, see also *Lazarov*, cited above, § 45). The applicants were further distressed by the need to live in apparently worse conditions in the municipal housing where they were accommodated (see paragraphs 8 and 29 above). The Court thus awards the amount claimed by the applicants, namely EUR 4,000, in its entirety.

B. Costs and expenses

35. The applicants claimed BGN 1,540 (the equivalent of EUR 786) for the fees charged by their lawyers in the domestic judicial proceedings. They presented contracts for legal representation whereby they had engaged to pay this amount to their lawyers. As already mentioned, the applicants claimed additionally the court fees they had been ordered to pay in the domestic proceedings, in the amount of EUR 612 (see paragraphs 14 and 28 above).

36. For the proceedings before the Court, the applicants claimed EUR 3,100 for legal representation, requesting that any amount awarded by the Court be paid directly to their lawyer, Ms N. Dobreva. In support of this claim the applicants presented a time sheet and a contract for legal representation.

37. The Government contested the claims. They were in particular of the view that the claim concerning the expenses for legal representation before the Court was exaggerated.

38. As regards the claims concerning the costs and expenses incurred in the domestic proceedings, the Court reiterates that it can award such costs and expenses where they were actually and necessarily incurred in order to avoid, or obtain redress for, the violation found (see, for example, *Eerikäinen and Others v. Finland*, no. 3514/02, § 81, 10 February 2009). In the proceedings brought at the domestic level the applicants sought compensation for the delay on the part of the Sofia municipality to provide them with a flat; accordingly, the Court concludes that they attempted to obtain redress for the violation found in their case. As the costs claimed appear also to have been actually and necessary incurred, the Court awards them in full, in the total amount of EUR 1,398 (see paragraph 35 above).

39. As to the claim concerning the proceedings before it, the Court, having regard to the documents in its possession and to its case-law, and in particular the fact that the case is a repetitive one (see the case-law cited in paragraph 22 above), considers it reasonable to award the sum of EUR 1,000 for the applicants' legal representation. As requested by the applicants, this sum is to be paid directly to their lawyer, Ms N. Dobreva.

C. Default interest

40. 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 applicants jointly, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:
      (i) EUR 7,000 (seven 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 2,398 (two thousand three hundred and ninety-eight euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses, EUR 1,000 (one thousand euros) of which is to be paid directly to the applicants' 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 13 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško	Khanlar Hajiyev
Deputy Registrar	President