

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

FIFTH SECTION

CASE OF RAYKOVA v. BULGARIA

(Application no. 5442/11)

JUDGMENT

STRASBOURG

13 October 2016

This judgment is final. It may be subject to editorial revision.



In the case of Raykova 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. 5442/11) 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, Ms Rayna Trifonova Raykova ("the applicant"), on 11 December 2010.

2. The applicant was represented by Ms L. Paunova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. On 10 January 2014 the complaints concerning the authorities' failure to provide to the applicant a garage 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 applicant was born in 1959 and lives in Sofia.

5. The applicant's husband owned a house with a yard and a garage in Sofia.

6. On 14 June 1985, by decision of the Sofia mayor, the property was expropriated with a view to constructing a school. 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's husband was to be compensated with a four-room flat and a garage in a building which the municipality intended to construct.

7. By a supplementary decision of 12 September 1986, 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 provided in compensation. No mention was made however of the garage. Even though, after judicial review initiated by the applicant's husband, in a final judgment of 18 March 1987 the Sofia City Court ordered the mayor to supplement the decision and specify the exact garage to be provided to the applicant's husband, this was not done.

8. In 2004 the municipal authorities transferred to the applicant's husband property to a flat different from the one described in the decision of 12 September 1986, which however he did not contest.

9. The applicant's husband passed away in 2005. By virtue of his will, all his property was left to the applicant.

10. In a letter signed by the chief architect of Sofia and dated 8 July 2009 the applicant was informed that the decision of 12 September 1986 had not yet been supplemented to specify the garage to be provided to her because no buildings with garages earmarked for the purpose were being built.

11. In August 2009 the applicant challenged before the courts the mayor's failure to issue a decision specifying the garage to be provided to her. In a final judgment of 23 June 2010 the Supreme Administrative Court dismissed her claim, noting that the case at hand did not concern what was defined by statute as "unlawful failure to act", but instead the enforcement of the judgment of 18 March 1987 (see paragraph 7 above), which had to be pursued under a different procedure.

12. In parallel proceedings brought on an unspecified date in 2009, the applicant sought damages from the Sofia municipality for wrongful failure to provide her with a garage. In a final decision of 23 September 2010 the Supreme Administrative Court declared the claim inadmissible, on the ground that the courts had already established in the judgment of 23 June 2010 that there had not been any unlawful failure to act on the part of the administrative authorities.

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 that the authorities in Sofia had failed for many years to provide the garage due to her, and that she had lacked an effective domestic remedy in that regard.

15. The applicant relied on Article 1 of Protocol No. 1 and Articles 13 and 17 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."

16. The Government did not comment on the admissibility and merits of the application.

17. 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.

18. 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).

19. Similarly to these cases (see, for example, *Kirilova and Others*, § 104, and *Antonovi*, § 28), the Court is of the view that the 1985 expropriation decision, stating that the applicant's husband was to receive a garage in compensation (see paragraph 6 above), created an entitlement for him, and for the applicant as his heir (see paragraph 9 above), 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).

20. 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).

21. The entitlement for the applicant's husband, and the applicant as his heir, to receive a garage arose in 1985, thirty-one 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. The only explanation provided by the authorities – the Sofia chief architect's statement in 2009 that no buildings with garages earmarked for the purpose of compensation were being constructed at the moment (see paragraph 10 above) – cannot be a valid justification for such a lengthy delay, seeing that it was exactly the municipal authorities' obligation to construct the garage to be provided to the applicant.

22. 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, as noted above, they adopted a passive attitude, leaving the applicant in a state of uncertainty as to whether and when she would receive the compensation to which she 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).

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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. Pecuniary damage

25. For pecuniary damage, the applicant claimed, in the first place, 15,630 euros (EUR) for the value of the garage due to her. The claim was based on an expert valuation of September 2014 commissioned by the applicant, which took into account the characteristics of a garage of 22 square metres in the area where the flat initially offered to the applicant's husband (see paragraphs 7-8 above) was to be located. The expert based her

assessment on sale offers for comparable properties in the area, as well as on data about the costs for constructing a similar garage.

26. Under the head of pecuniary damage, the applicant claimed in addition EUR 21,000 for the "market rent" for the garage for 25 years, referring to the expert valuation above, which also assessed the average rent for a garage of the type described in it for the period of 2012-14. Lastly, the applicant claimed the reimbursement of EUR 9,964 paid between 2005 and 2014 for the insurance of her car.

27. The Government contested the claims, arguing in particular that the conclusions of the expert report concerning the garage's market value were "arbitrary", and that there was no need to award the applicant the "market rent" for the garage and the sum paid for insurance.

28. As regards the damage stemming from the continuing failure of the authorities to deliver the garage due to the applicant, the Court starts by observing that the Sofia mayor has not taken the necessary decision specifying the characteristics, such as location and size, of that garage. For that reason, the Court does not consider it appropriate, as it has done in other cases of the same type (see, for example, *Kirilova and Others v. Bulgaria* (just satisfaction), nos. 42908/98, 44038/98, 44816/98 and 7319/02, § 27, 14 June 2007, and *Dichev*, cited above, § 42), to instruct the Government to deliver to the applicant the property due to her. The Court is of the view that the respondent Government must pay the applicant a sum corresponding to the current average value of a garage in Sofia. Taking into account the information submitted by the applicant and other data available to it related to the property market in Sofia, it assesses that value at EUR 11,000.

29. The Court finds, secondly, that it is justified to award the applicant damage for any loss of opportunity on account of not being able to use and enjoy the garage due to her over a substantial period of time (see *Kirilova and Others* (just satisfaction), cited above § 33). However, the Court is unable to follow the method suggested by the applicant (see paragraph 26 above), for several reasons. Firstly, it is unclear whether the applicant would have let the garage out had it been delivered to her, or would have used it herself. Secondly, 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. Lastly, in view of the economic realities in Bulgaria, it is unrealistic to assume that rent throughout the period since 7 September 1992 would have been equal to that charged at present (see *Kirilova and Others* (just satisfaction), §§ 28-30, and *Dichev*, § 43, both cited above). Thus, having regard to the number of imponderables involved, the Court must rule in equity. It awards the applicant EUR 4,000 under the present head, plus any tax that may be chargeable.

30. Lastly, the Court rejects the claim for the reimbursement of the amount paid by the applicant for car insurance (see paragraph 27 above), seeing no direct causal link between it and the violation found in the case.

B. Non-pecuniary damage

31. Under this head the applicant claimed EUR 10,000. The Government contested the claim as excessive.

32. The Court is of the view that the applicant must have experienced frustration as a result of the authorities' prolonged failure to deliver the garage to which she was entitled. Taking into account the relevant circumstances, the Court awards the applicant EUR 2,000 in respect of non-pecuniary damage.

C. Costs and expenses

33. For the proceedings before the Court, the applicant claimed, firstly, 3,000 Bulgarian levs (BGN), the equivalent of EUR 1,530, for the work performed by her lawyer. In support of this claim she presented a contract for legal representation. She also claimed BGN 19.2, the equivalent of EUR 10, for postage, and BGN 128, the equivalent of EUR 65, for translation, presenting the relevant receipts.

34. The applicant also claimed the reimbursement of BGN 626.90, the equivalent of EUR 320, for the costs and expenses incurred by her in the domestic proceedings described in paragraphs 11-12 above. In support of that claim she presented contracts for legal representation and receipts certifying the payment of court fees.

35. The Government contested the claims related to the proceedings before the Court as excessive, and asked the Court to dismiss entirely the claims stemming from the domestic proceedings.

36. Having regard to the circumstances of the case and in particular the fact that it is a repetitive one (see the case-law cited in paragraph 18 above), the Court considers it reasonable to award the sum of EUR 1,000 for the applicant's legal representation in the proceedings before it. In addition, it awards the applicant the expenses made by her for postage and translation, totalling EUR 75 (see paragraph 34 above), noting that they appear to have been actually and necessary incurred and that they are reasonable as to quantum.

37. As to the claim concerning the expenses in the domestic proceedings, the Court notes that the proceedings described in paragraph 11 above were not aimed at avoiding the violation found in the case or obtaining redress thereof, since, as observed by the Supreme Administrative Court, the applicant had not pursued the relevant procedure. As regards the tort proceedings (see paragraph 12 above), the Court is of the view that they could, in principle, provide redress for the breach of the applicant's rights (see, for example, *Antonovi*, cited above, § 13, where the applicants obtained compensation resorting to the same procedure). However, the applicant has not specified what part of the expenses claimed by her stemmed from these proceedings, and the Court is unable to speculate on the matter. The Court thus dismisses the claim related to the domestic proceedings in its entirety.

D. Default interest

38. 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. *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 15,000 (fifteen thousand 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 1,075 (one thousand and seventy-five 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 13 October 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Khanlar Hajiyev
President