

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

THIRD SECTION

CASE OF STOYANOVA v. BULGARIA

(Application no. 40101/19)

JUDGMENT

STRASBOURG

6 December 2022

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



In the case of Stoyanova v. Bulgaria,

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

Pere Pastor Vilanova, *President*,
Georgios A. Serghides,
Yonko Grozev, *judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 40101/19) 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 a Bulgarian national, Ms Snezhanka Docheva Stoyanova, born in 1973 and living in Dobrich ("the applicant"), who was 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 Agents, Mr V. Obretenov and Ms V. Hristova, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 15 November 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 applicant for her parents' property which was expropriated for urban development in 1985 by the municipal authorities of Dobrich. The applicant was 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 was resumed and, according to the latest information submitted by the Government, the building was expected to be completed by 30 November 2022. The applicant had not received her flat or any alternative compensation by the time the parties filed their latest submissions with the Court in September 2022.

2. On 31 August 2020 the applicant brought a tort action under the State and Municipalities Responsibility for Damage Act 1988 (hereinafter "the 1988 Act"), seeking compensation for the delay in providing the flat due to her for the period from 1 September 2015 to 1 September 2020. In a final judgment of 10 February 2022 the Supreme Administrative Court (hereinafter "the SAC") held that the municipality was responsible for the failure to deliver the flat within a reasonable time, and awarded the applicant 14,440 Bulgarian levs (BGN) (7,383 euros (EUR)) in pecuniary damage and BGN 5,000 (EUR 2,556) in non-pecuniary damage. These sums were paid to the applicant on 17 March 2022.

3. The applicant complains 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

4. 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).

5. 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).

A. Admissibility

6. The Government argued that the applicant had failed to exhaust available and effective domestic remedies. Since the applicant had initiated a tort action under the 1988 Act only after the submission of her application to the Court (see paragraph 2 above), she had not exhausted that remedy at the relevant time and her application was premature. In addition, the applicant should have lodged a further claim for the period after 17 March 2022, when she had received the compensation awarded to her by the SAC (ibid.).

7. The applicant contested the effectiveness of a tort action under the 1988 Act, arguing that such a claim only resulted in the award of compensation for the five years preceding the date of its submission, in view of the relevant domestic rules on limitation periods.

8. While it takes note of recent domestic case-law awarding damages to plaintiffs in tort proceedings under the 1988 Act, as presented by the Government, the Court reiterates that a tort claim cannot directly compel the authorities to build and deliver the flat; it only results in the award of compensation for a limited period of time, as happened in the present case (see paragraph 2 above). The applicant should not be expected to periodically lodge new actions and seek further compensation, since she cannot predict when the authorities will fulfil their obligation to build and deliver her flat (see *Kirilova and Others*, cited above, §§ 116-119, and *Antonovi v. Bulgaria*, no. 20827/02, § 24, 1 October 2009). In view of the considerations above and the fact that the proceedings brought by the applicant in the present case have been completed (see paragraph 2 above), the previous pendency of these proceedings cannot lead to the conclusion that the application was premature. While, therefore, the Government's objections in that respect are to be dismissed, the fact that the applicant has already received partial compensation at the domestic level remains of relevance under Article 41 of

the Convention (see paragraph 23 below; also *Kirilova and Others*, cited above, § 119).

9. The Government considered also that the applicant had lost her victim status, as in the domestic tort proceedings she had received full and express acknowledgment of the violation of her rights, as well as an appropriate monetary redress.

10. However, she has not yet received her flat, and the compensation awarded to her by the SAC, accompanied by a recognition of the breach of her rights, only concerned the delay for the period between 2015 and 2020 (see paragraph 2 above). The present complaint covers a much longer time-frame (see paragraph 14 below). Accordingly, the applicant has not ceased to be a victim of the alleged violation (see *Antonovi*, cited above, § 23).

11. The Government further claimed that the applicant had abused her right to individual application in that she had failed to inform the Court that she had initiated a tort claim under the 1988 Act. The Court considers that, in view of its findings above (see paragraph 8), the proceedings under the 1988 Act do not relate sufficiently to the core issue at stake, and therefore informing the Court about the initiation of such proceedings cannot be deemed to be essential for the outcome of the application (see, *mutatis mutandis, Anatoliy Marinov v. Bulgaria*, no. 26081/17, §§ 30-32, 15 February 2022). Therefore, the applicant's conduct did not amount to an abuse of the right of application.

12. Additionally, the Government submitted that during a public hearing held on 1 November 2021 before the SAC, the applicant's representative had said that she expected the application to be communicated and the parties to start friendly-settlement negotiations, thus breaching the confidentiality of such negotiations. While the Government raised this objection outside the set time-limit, the Court will not examine whether they were estopped from doing so, because in any event it may examine such issue on its own initiative (see *Dimo Dimov and Others v. Bulgaria*, no. 30044/10, § 41, 7 July 2020, with further references). Given the fact that at the time of the court hearing of 1 November 2021 the Court had not yet given notice of the application to the Government and had not sent to the parties draft friendly-settlement declarations (this happened in December 2021), there has been no breach of the duty of confidentiality.

13. Finally, the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds and must be declared admissible.

B. Merits

14. The applicant's entitlement to be provided with a flat as compensation for her parents' expropriated property arose in 1985, and she has not yet received her flat, or any alternative compensation (see paragraph 1 above).

Thus, the delay is thirty years (from the entry into force of Protocol No. 1 to the Convention for Bulgaria in 1992 onwards).

15. The applicant 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.

16. The Government maintained that the domestic authorities had 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 applicant. They contended that the municipality's financial situation had caused some delay in the compensation procedure, but the difficulties had been largely overcome, the applicant had been awarded sufficient redress at domestic level for the delay, and she was to receive her flat by the end of November 2022. In the Government's view, the applicant was responsible for part of the delay incurred, because she had failed to resort to procedures available to her to bring about the conclusion of the procedure at an earlier date – she could request financial compensation in lieu of compensation in the form of a flat, or 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).

17. The Dobrich municipality never abandoned its plans to construct the building where the applicant's flat is located and actively sought financing in order to complete the construction, as noted by the Government. Consequently, the applicant should not be criticised for her 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 applicant's failure to pursue those avenues cannot lead to the conclusion that she is to blame for some part of the delay in the compensation procedure.

18. As to the authorities, in the present case it does not appear that they proved reluctant to assist the applicant, nor that they actively opposed his attempts to receive the flat due to him (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, even assuming that the

applicant will receive the flat due to her in November 2022 (see paragraph 1 above), the fact remains that for many years she faced uncertainty and has 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 will not be achieved (see *Kirilova and Others*, cited above, § 123).

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed non-pecuniary damage, without indicating a specific amount.

21. For costs and expenses, the applicant claimed 2,097 euros (EUR). This included EUR 1,919 for legal representation and EUR 178 for translation. To support her claim, she presented a time sheet for the work performed by her lawyer and receipts for the amount paid for translation. She requested that EUR 597 awarded under this head be paid to her and the remainder directly to the bank account of her legal representative.

22. The Government submitted that any award for non-pecuniary damage should not exceed the amounts awarded in similar cases. They contested the applicant's claim for costs and expenses as excessive.

23. The Court, ruling on an equitable basis and having regard to the fact that the applicant has received partial compensation at the domestic level (see paragraph 2 above), finds it appropriate to award EUR 1,000 in respect of non-pecuniary damage.

24. 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 applicant a global amount of EUR 900 to cover all costs incurred, plus any tax that may be chargeable to her. As requested by the applicant, EUR 303 of this amount is to be paid directly into the bank account of her 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 applicant, 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 1,000 (one 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 the applicant, in respect of costs and expenses, EUR 303 (three hundred and three euros) of which to be paid directly into the bank account of her 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President