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

FIFTH SECTION

DECISION

Application no. 57214/09
Zdravko Kirilov KIROV and Others
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 9 January 2018 as a Chamber composed of:

Angelika Nußberger, *President,*
Erik Møse,
Yonko Grozev,
Síofra O'Leary,
Mārtiņš Mits,
Gabriele Kucsko-Stadlmayer,
Lətif Hüseynov, *judges,*

and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 15 September 2009,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Zdravko Kirilov Kirov, Ms Lina Zdravkova Kirova and Mr Kiril Zdravkov Kirov, are Bulgarian nationals were born in 1928, 1958 and 1961 respectively and live in Plovdiv. They were represented before the Court by Mr M. Ekimdzhiev and Ms M. Slavova, lawyers practising in Plovdiv.

2. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicants complained under Article 1 of Protocol No. 1 that, being the losing party in civil proceedings, they had been ordered to pay excessively high court fees.

4. On 29 November 2016 the above complaint was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

A. The circumstances of the case

5. The applicants are among the heirs of N.R.

6. By a decision dated 27 January 1999, taken on the basis of section 3(3) of the Compensation of Owners of Nationalised Properties Act (see paragraph 19 below), the Plovdiv regional governor recognised the applicants' entitlement to compensation through compensation bonds for properties abandoned by N.R. in Greece on an unspecified date before 1964.

7. By another decision of 19 April 1999, based on an expert's calculation of the value of N.R.'s properties, the governor set the amount of bonds to be awarded to the applicants. Each of them was to receive bonds with a face value of 5,371,400 Bulgarian levs (BGN), the equivalent of approximately 2,740,500 euros (EUR). That decision was not appealed and it entered into force. The applicants later received their bonds and sold most of them to investors.

8. In 2001 the expert who had made the calculations on which the decision of 19 April 1999 was based was indicted by the prosecuting authorities for having wilfully given a false evaluation. In 2004 he was convicted for that offence.

9. On 22 February 2006 the regional governor brought a claim against the applicants, alleging that there had been a gross error in the calculations which had led to the award of the bonds, and that each of them had in fact been entitled to bonds with a face value of BGN 21,489 (EUR 10,960). He asked that the applicants be ordered to return the improperly awarded bonds or pay a sum equal to their market value.

10. In his statement of claim, the governor gave the bonds' face value as the value of the claim.

11. On 27 October 2006 the Pazardzhik Regional Court dismissed the claim against the applicants. The Veliko Tarnovo Court of Appeal upheld its judgment on 13 July 2007.

12. After a further appeal by the regional governor, the Supreme Court of Cassation in a final judgment of 22 July 2009 reversed the earlier decisions and ordered each of the applicants to return bonds to the State with a face value of BGN 5,349,911 (approximately EUR 2,730,000) – namely the value indicated in paragraph 7 above reduced by the value indicated in paragraph 9).

13. The Supreme Court of Cassation also ordered each of the applicants to pay court fees of BGN 106,998 (approximately EUR 54,600) to the State. These fees represented 2% of the face value of the bonds the applicants had been ordered to return.

14. On 24 August 2009 the applicants applied to the Supreme Court of Cassation under Article 192 § 4 of the Code of Civil Procedure (see paragraph 26 below) to amend its judgment of 22 July 2009 in so far as it concerned the court fees. They argued that the fees should have been calculated as a percentage of the market value of the compensation bonds that had been improperly awarded and not as a percentage of their face value.

15. Their application was dismissed in a decision of 15 October 2009. The Supreme Court of Cassation was of the view that given the nature of the claim brought against the applicants, the market value of the compensation bonds was irrelevant for the calculation of the court fees.

16. On 19 August and 17 December 2009 the Pazardzhik Regional Court issued writs of execution against the applicants concerning, respectively, the court fees due by them and the return of the improperly awarded compensation bonds. Two sets of enforcement proceedings were instituted after that.

17. As concerns the return of the compensation bonds, the Minister of Finance, representing the State, referred the matter to a bailiff. In 2010 the latter commissioned an expert report, which calculated the market value of the bonds due by each of the applicants (namely with face value of BGN 5,349,911 – see paragraph 12 above), at BGN 973,683 (EUR 496,777); this represented 18.2% of the bonds' face value and it appears that the State sought to receive this sum, and not actual compensation bonds. The bailiff took a number of measures to obtain payment, such as impounding some of the applicants' belongings and the seizure of the first applicant's pension. Documents submitted by the Government after communication of the application showed that by the beginning of 2017 those enforcement proceedings were still pending and that the sum collected amounted to about BGN 24,000 (approximately EUR 12,240).

18. As to the court fees due by the applicants, since they were considered public receivables the relevant writ of execution was sent to the National Revenue Agency. In 2009 that Agency opened enforcement proceedings, but until December 2016 it did not take any action to seek payment. The Government submitted documents, showing that after the communication of the present application, on 29 December 2016, an official at the Agency impounded a car owned by one of the applicants, and decisions were subsequently taken, in March and April 2017, to freeze all bank accounts owned by the applicants.

B. Relevant domestic law

1. The Compensation of Owners of Nationalised Properties Act

19. In 1997 Parliament adopted the above-mentioned Act (*Закон за обезщетяване на собственици на одържавени имоти*), which provided for compensation for owners of certain categories of property taken by the Communist authorities. It included, in particular, under section 3(3), former owners or their heirs who had had for various reasons to abandon properties in Greece which had been ceded to the Greek State under a treaty concluded in 1964 aimed at settling pending financial issues between the two countries (*Спогодба за уреждане на висящите финансови въпроси и икономическо сътрудничество между Народна република България и Кралство Гърция*).

20. The Act provides for various means of compensation, in particular through so-called compensation bonds (section 3(1)). The bonds are not exchangeable for cash and can be used for participation in privatisation tenders (section 4(2)). A secondary market for the bonds has developed in Bulgaria and their market value largely depends on the availability of privatisation offers. Thus, while until November 2004 bonds were traded at between 15 and 25% of their face value, at the end of 2004 and the beginning of 2005, due to the announced privatisation of several major enterprises, the rates reached 100% and more of the bonds' face value. After that the market prices fell once again. In 2017 the bonds were traded at about 50-60% of their face value.

2. Court fees

21. The question of court fees was regulated until 2008 by the Code of Civil Procedure of 1952, which, even after being superseded by other legislation, remained applicable to ongoing proceedings. Certain provisions of the State Fees Act (*Закон за държавните такси*) were applicable as well.

22. The general rule was that court fees were payable by the plaintiff in advance, upon the submission of a claim. Where the plaintiff succeeded in the proceedings, the defendant was ordered to reimburse the plaintiff for the fees the latter had previously paid (Article 64 § 1 of the Code).

23. State bodies were exempt from the obligation to pay court fees (Article 63 § 4 of the Code). Where the plaintiff was a State body and was successful in the proceedings, the defendant had to pay the relevant fees to the State (Article 64 § 5).

24. Court fees were set at 4% of the value of a claim for proceedings before a first-instance court and 2% of the value of the claim when examined on appeal or in cassation.

25. The value of the claim had to be stated by the plaintiff at the time of bringing the proceedings, and, once finally determined, was binding on the courts for the purpose of calculating the relevant court fee. The defendant or the court examining the case at first instance, acting *ex officio*, could contest the value of the claim introduced by the plaintiff, that being possible at the latest during the first court hearing. The matter was then to be resolved by the court seised of the case (Article 56 § 1 of the Code).

26. Article 192 § 4 of the Code authorised parties to seek amendment of a final judgment, in so far as it concerned costs and expenses, within two months of its entry into force.

3. Limitation period for public receivables

27. By Article 171 § 1 of the Code of Tax and Insurance Procedure, the statutory limitation period for public receivables such as court fees is five years, to be counted from 1 January of the year following the one during which payment had to be made. A fresh limitation period starts to run whenever the fiscal authorities undertake action to seek payment (Article 172 § 2).

28. All receivables covered by the limitation period are to be written off. After 1 January 2016, that is to be done *ex officio* by the fiscal authorities (Article 173).

THE LAW

A. Complaint under Article 1 of Protocol No. 1

29. Relying on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, the applicants complained that they had been ordered by the Supreme Court of Cassation to pay arbitrary and excessive court fees.

30. The Court is of the view that it suffices to examine the complaint under Article 1 of Protocol No. 1, which reads as follows:

> "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."

1. Arguments of the parties

(a) The Government

31. The Government argued that the applicants had failed to exhaust the available domestic remedies because they had not contested the value of the claim given in the regional governor's statement of claim against them, as authorised under Article 56 § 1 of the Code of Civil Procedure.

32. Moreover, the Government pointed out that the applicants had never made any payment and had not had to suffer any other restriction related to the court fees they had been due to pay. In any event, the applicants' debt in relation to those fees had become prescribed, as the five-year prescription period under Article 171 § 1 of the Code of Tax and Insurance Procedure had already expired.

33. Lastly, the Government argued that the court fees the applicants had been ordered to pay had not been disproportionately high.

(b) The applicants

34. The applicants were of the view that they had not been obliged to resort to the procedure provided for under Article 56 § 1 of the Code of Civil Procedure. They pointed out that at the start of the proceedings brought by the regional governor they had not been required to pay anything and for that reason the question of the value of the claim had been "without any legal significance" for them.

35. The applicants contested the Government's argument that the obligation to pay court fees had not resulted in any restriction of their rights, referring to the measures taken against them by the National Revenue Agency at the end of 2016 and the beginning of 2017 (see paragraph 18 above).

36. Lastly, the applicants argued that the fees they had been ordered to pay amounted to an excessive individual burden.

2. The Court's assessment

37. The Court takes note of the Government's objection of non-exhaustion of domestic remedies (see paragraph 31 above), based on the fact that the applicants did not contest the value of the regional governor's claim against them, as they were entitled to do under Article 56 § 1 of the Code of Civil Procedure (see paragraph 25 above). The applicants contested that objection (see paragraph 34 above). In view of its conclusion below to strike out the application out of its list of cases, the Court finds that it is not necessary to examine the objection.

38. The Government indicated further (see paragraph 32 above) that pursuant to domestic law the applicants' debt relating to the court fees, which is the subject of the present complaint, had become prescribed. The

applicants did not expressly contest that argument, stating instead that the restrictions imposed on them by the fiscal authorities at the end of 2016 and 2017 had affected their rights (see paragraph 35 above).

39. Under Article 37 § 1 (c) of the Convention, the Court may:

> "at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... for any other reason established by [it], it is no longer justified to continue the examination of the application".

40. It is clear from this provision that the Court enjoys a wide discretion in identifying grounds capable of being relied upon in striking out an application on this basis. Such grounds must reside in the particular circumstances of each case (see *Association SOS Attentats and de Boery v. France* [GC], (dec.), no. 76642/01, § 37, ECHR 2006-XIV).

41. The applicants in the present case complained that the Supreme Court of Cassation in its judgment of 22 July 2009, allowing the regional governor's claim against them for the return of the improperly awarded compensation bonds (see paragraph 13 above), had ordered them to pay excessive and "arbitrary" court fees. On the basis of that judgment, the Pazardzhik Regional Court on 19 August 2009 issued writs of execution against the applicants and the National Revenue Agency opened enforcement proceedings (see paragraphs 16 and 18 above).

42. However, from the information in the case file it is clear that until the end of 2016 the Agency took no action whatsoever to obtain payment, and no payment was effectively made by the applicants in the context of those enforcement proceedings (see paragraph 18 above).

43. Under Article 171 § 1 of the Code of Tax and Insurance Procedure, the limitation period for public receivables such as court fees is five years, which starts to run on 1 January of the year following the one during which payment had to be made (see paragraph 27 above).

44. On the basis of the information in the case file it is clear that in the present case the limitation period under Article 171 § 1 of the Code of Tax and Insurance Procedure started running on 1 January 2010. According to the information provided to the Court, the limitation period was never interrupted as the National Revenue Agency never took any action aimed at obtaining payment until 29 December 2016 (see paragraph 18 above), and the applicants themselves made no such payment. Thus, after five years, namely on 1 January 2015, the applicants' obligation to pay the court fees set in the judgment of 22 July 2009 became time-barred pursuant to domestic law.

45. After that date the applicants were able to rely on that fact and seek to have their debt written off. They have not argued that they were in any way prevented from doing so. They were also able to seek the annulment of any restrictions imposed on them by the National Revenue Agency at the end of 2016 and the beginning of 2017, in the context of the enforcement proceedings concerning the court fees, namely the impounding of a car

owned by one of the applicants and the freezing of their bank accounts (see paragraph 18 above *in fine*). Furthermore, where the authorities seek to enforce the writ of execution concerning the court fees after the expiry of the limitation period, the applicants have not contested the existence, claimed by the Government, of an effective remedy which would enable them to contest any such measures.

46. The circumstances above lead the Court to consider that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention. No particular reason relating to respect for human rights as defined in the Convention and the Protocols thereto requires the Court to continue its examination of the application under Article 37 § 1 *in fine*.

47. The Court would also reiterate that after it has struck an application out of its list of cases it can at any time decide to restore it to the list if it considers that the circumstances justify such a course, in accordance with Article 37 § 2 of the Convention (see *Khan v. Germany* [GC], no. 38030/12, § 41, 21 September 2016).

48. Consequently, the application should be struck out of the Court's list of cases.

B. Application of Rule 43 § 4 of the Rules of Court

49. The relevant part of Rule 43 § 4 of the Rules of Court reads as follows:

> "When an application has been struck out ... the costs shall be at the discretion of the Court." ...

50. The Court reiterates that unlike Article 41 of the Convention, which is only applicable in the case of a finding of a violation of the Convention or of the Protocols thereto, Rule 43 § 4 authorises it to make an award to the applicant in respect of costs and expenses – and in this respect only – when the application has been struck out (see *Khan*, § 44, cited above). As the wording of Rule 43 § 4 indicates, the Court is authorised to make an award but it enjoys a discretion and is not required to do so.

51. The applicants claimed EUR 1,000 for the fees charged by their lawyers for the proceedings before the Court. In support of this claim they submitted a contract for legal representation, stating that they had paid the equivalent of that amount in Bulgarian levs.

52. The Government contested the claim.

53. In the circumstances of the present case, and considering that questions related to the exhaustion of domestic remedies were left in abeyance (see paragraph 37 above), the Court concludes that it is not appropriate or necessary to make any specific award in respect of reimbursement of costs.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 1 February 2018.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President