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

FOURTH SECTION

DECISION

Application no. 30474/05
Simeon Iliev TASHEV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 3 June 2014 as a Committee composed of:
George Nicolaou, *President,*
Zdravka Kalaydjieva,
Faris Vehabović, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 August 2005,
Having regard to the initial observations submitted by the respondent Government and the observations in reply submitted by the applicant, and the additional observations submitted by the parties after the Court invited them to do so on 12 July 2013,
Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Simeon Iliev Tashev, is a Bulgarian national, who was born in 1926. He passed away on 1 January 2009. By a letter dated 20 May 2011 his heirs – his wife Ms Margarita Dimitrova Tasheva and his sons Mr Veselin Simeonov Tashev and Mr Iliya Simeonov Tashev – informed the Court that they wished to continue the application in his stead.
2. The applicant was initially represented by Ms M. Ilieva and following his death his heirs authorised Ms N. Popova. Ms Ilieva and Ms Popova are lawyers practising in Sofia.
3. The Bulgarian Government ("the Government") were represented by their Agents, Ms N. Nikolova, and then by Ms M. Kotseva, from the Ministry of Justice.

A. The circumstances of the case

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant owned a flat in Sofia which was nationalised in 1948. The State subsequently rented the property and in 1965 it sold it to third parties.

6. On 16 February 1993, following the adoption of denationalisation legislation, which authorised, as an exceptional measure, former owners of nationalised dwellings to seek to have them returned even where the property had in the meantime been transferred to third parties, the applicant brought an action against the flat's buyers, claiming that they had obtained the property through abuse of power and in breach of the relevant regulations.

7. The action was examined by the Sofia District Court, which held several hearings.

8. On 14 April 1997 it held its last hearing and announced that it would deliver its judgment in due course. Following that, in written submissions of 13 May 1997 the applicant brought to the attention of the court another argument in support of his claim, namely that the contract by which the defendants had acquired the disputed flat was null and void as it had not been signed on the part of the municipality by the competent official.

9. In a judgment of 12 September 1997 the Sofia District Court dismissed the applicant's claim, stating that he had failed to adduce evidence that the defendants had acquired the flat in abuse of power or in breach of the relevant regulations. The court refused to examine the applicant's additional argument raised in his submissions of 13 May 1997 because it had been made after the final oral pleadings by the parties.

10. On 19 March 1998 the applicant filed an appeal. In a judgment of 30 July 2003 the Sofia City Court confirmed the lower court's findings, including its refusal to examine the argument raised by the applicant on 13 May 1997.

11. On 9 October 2003 the applicant lodged a cassation appeal. The Supreme Court of Cassation held a hearing on 2 February 2005 and in a judgment of 9 February 2005 upheld the Sofia City Court's judgment.

B. Relevant domestic law

12. The relevant provisions of domestic law concerning remedies for length of proceedings have been summarised in the Court's decisions in the cases of *Balakchiev and Others v. Bulgaria* ((dec.), no. 65187/10, §§ 18-37, 18 June 2013) and *Valcheva and Abrashev v. Bulgaria* ((dec.), nos. 6194/11 and 34887/11, §§ 47-66, 18 June 2013).

COMPLAINTS

13. The applicant complained of the length of the civil proceedings he had been a party to and the lack of any effective remedies in that regard, under Article 6 § 1 and Article 13 of the Convention.

14. The applicant complained in addition under Article 6 § 1 of the Convention that his case had not been heard by an independent and impartial tribunal, that his lawyer had not had effective access to the case-file, and that the courts had decided wrongly. Relying on Article 14 of the Convention, he complained that he had been placed in a less favourable position as compared to former owners of expropriated property who had been able to initiate restitution proceedings at a later date, after the initial development of the courts' jurisprudence on the matter, and of the courts' refusal to examine his argument raised on 13 May 1997. Lastly, without raising any specific arguments, the applicant relied on Article 13 of the Convention and Article 1 of Protocol No. 1.

THE LAW

A. Preliminary issue

15. The Court notes, at the outset, the wish of the heirs of the initial applicant to continue the present proceedings in his stead. It finds that they have standing to do so.

B. Complaints related to the length of the proceedings

16. The applicant complained, first, that the civil proceedings in his case had been excessively lengthy and that he had had no effective remedies at his disposal, under Article 6 § 1 and Article 13 of the Convention, which, insofar as relevant, read:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

17. In their initial submissions, the Government argued that the applicant was himself to blame for a significant part of the delay in the proceedings,

that the case had been particularly complex, and that the domestic courts had acted with due diligence.

18. After the Court invited the parties, by letter of 12 July 2013, to make additional observations on the complaints at issue, in particular in connection with the new domestic remedies concerning length of proceedings introduced in Bulgarian law in 2012, the Government pointed out that those remedies were available even to applicants who had already lodged their applications with the Court, as in the present case, and referred to the Court's finding in the decisions in the cases of *Balakchiev and Others* and *Valcheva and Abrashev*, cited above.

19. The applicant's heirs considered, on the other hand, that the remedies at issue were only available to persons who had been parties to the impugned proceedings, and were thus not available to them, in their quality as heirs of Mr Tashev. Moreover, they considered that it would be unjust to require from them to pursue the remedies, given that this would take time, and that the determination of the claims brought by Mr Tashev in 1993 had already been significantly delayed. They argued in addition that the domestic procedures would be too cumbersome.

20. The Court recalls that in its recent decisions in the cases of *Balakchiev and Others*, §§ 53-85, and *Valcheva and Abrashev*, §§ 92-124, both cited above, it found that the remedies at issue, under sections 60a et seq. of the Judiciary Act 2007 and section 2b of the State and Municipalities Liability for Damage Act 1988, could be regarded as effective remedies in respect of the allegedly unreasonable length of proceedings. It found further that the remedies at issue should be tried even by applicants who had lodged their applications with the Court before their introduction.

21. Turning to the present case, the Court takes note of the applicant's heirs' argument that the remedies at issue would be unavailable to them, as they had not themselves been party to the civil proceedings. However, in the absence of administrative or judicial practice limiting the access to the new remedies of heirs or other successors of the original parties, the Court is not prepared to accept this argument and is of the view that the applicant's heirs should in any event try the remedies at issue. The heirs have not satisfied the Court that there exist other special circumstances which absolve them from doing so.

22. It follows from the above that the complaint under Article 6 § 1 concerning the length of the proceedings must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

23. As to the complaint under Article 13 of the Convention, seeing its conclusion that the newly-introduced remedies are available to persons in a position such as the applicant's heirs, and that they are effective, the Court considers it manifestly ill-founded (see *Valcheva and Abrashev*, cited above, §§ 128-29; also *Nedyalkov and Others v. Bulgaria* (dec.),

no. 663/11, § 128, 10 September 2013). Accordingly, this complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Remainder of the applicant's complaints

24. The Court has examined the remainder of the applicant's complaints, as raised by him (see paragraph 14 above). However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

25. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Holds that the applicant's heirs have standing to continue the present proceedings in his stead;

Declares the application inadmissible.

Fatoş Aracı	George Nicolaou
Deputy Registrar	President