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

FIFTH SECTION

DECISION

Application no. 64570/10
Nikola Angelov VELYOV and Dimitar Angelov DIMITROV
against Bulgaria

The European Court of Human Rights (Fifth Section), sitting on 20 September 2016 as a Committee composed of:

Khanlar Hajiyev, *President,*
Faris Vehabović,
Carlo Ranzoni, *judges,*
and Milan Blaško, *Deputy Section Registrar,*

Having regard to the above application lodged on 12 October 2010,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The applicants, Mr Nikola Angelov Velyov and Mr Dimitar Angelov Dimitrov, are Bulgarian nationals, who were born in 1954 and 1950 respectively and live in Sofia. They were represented before the Court by Ms M. Tsenkova, a lawyer practising in Sofia.

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

A. The circumstances of the case

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

4. The applicants' father owned real property in Sofia.

5. In 1979 the property was expropriated with a view to constructing a residential building. The expropriation order, based on section 98 (1) of the

Territorial and Urban Planning Act of 1973 (*Закон за териториалното и селищно устройство* – "the TUPA"), provided that the applicants' father was to be compensated with a three-room flat, and that another, two-room flat, was to be provided to the first applicant. Both flats were to be located in a building which was to be constructed by a State-owned enterprise.

6. By a supplementary order of 14 May 1985, based on section 100 of the TUPA, the Sofia mayor indicated the exact future flats to be offered in compensation and their value. The parties disagreed as to whether the applicants and their father had paid in the part of that value which had not been covered by the value of the expropriated property.

7. The construction of the building where the flats were to be located did not start in the following years.

8. In 1992, following the entry into force of the Restitution of Property Expropriated under Building Planning Legislation Act (*Закон за възстановяване на собствеността върху някои отчуждени имоти по ЗТСУ, ЗПИНМ, ЗБНМ, ЗДИ и ЗС*), the former owners of the plot of land on which the building was to be constructed applied for restitution. In a decision of 17 August 1993 the Sofia mayor granted their application, finding in particular that no construction works had commenced on the plot of land. The restitution became effective on 25 August 1993 when the former owners paid back to the municipality the monetary compensation received by them at the time of expropriation.

9. In 1995 the chief architect of Sofia approved an amendment to the city's zoning plan, calling off the planned construction of the building where the flats offered to the applicants' father and the first applicant were to be located.

10. In February 1996 the applicants' father and the first applicant wrote to the mayor of Sofia, referring to the restitution of the plot of land and to the chief architect's decision above, and requesting to be offered other flats in compensation. It is unclear from the copy sent by the applicants whether their request for re-compensation (*преобезщетяване*) was notarised, as required by section 103 (5) of the TUPA (see paragraph 16 below). The mayor responded in a letter dated 28 March 1996, failing to take a formal decision and instead of that instructing the applicants' father and the first applicant to address the successor of the State-owner enterprise which had had to construct the building.

11. In 1998 the applicants' father passed away.

12. It does not appear that the applicants or their father challenged the mayor's failure to initiate a procedure for re-compensation, or that they made a new request, in accordance with law (see paragraph 16 below), to be allotted other flats. The order of 15 May 1985 (see paragraph 6 above) thus remains in force.

13. On an unspecified date in 1997 the applicants challenged the chief architect's decision mentioned in paragraph 9 above. It was quashed in a

judgment of the Supreme Administrative Court of 18 February 2000, as it was found that it had been issued in breach of the relevant procedural rules.

14. In 2002 the persons who had obtained the restitution of the plot of land on which the applicants' flats were to be constructed brought against the applicants an action for a declaratory judgment, petitioning the courts to recognise that they were the owners of the plot. In a judgment of 20 August 2004 the Sofia District Court allowed the action, and on 17 July 2009 the Sofia City Court upheld its judgment, finding in particular that the restitution had been valid as no construction works had commenced on the plot of land by the time of adoption of the restitution legislation. In a decision of 13 April 2010 the Supreme Court of Cassation refused to accept for examination the applicants' appeal on points of law.

B. Relevant domestic law and practice

15. The relevant domestic law in force until 1996-98 concerning the expropriation of property for public use and the provision of compensation, as well and the relevant domestic 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).

16. In particular, section 100 of the TUPA provided that, following the expropriation, a supplementary decision of the respective mayor had to designate the exact property offered in compensation to the owners. Such decision could be modified by the mayor, upon a notarised request by the expropriated owners, to provide for compensation in cash, for compensation with a smaller flat, or for compensation with a flat situated elsewhere (section 103 (5) of the TUPA). Any refusal of the mayor to make the modifications requested was subject to judicial review (*Решение № 540 от 12.02.1999 г. на ВАС по адм. д. № 4060/1998*; *Решение № 8310 от 22.06.2009 г. на ВАС по адм. д. № 3941/2009*; *Решение № 4 от 28.01.2009 г. на АС Стара Загора по адм. д. № 658/2008*).

17. In 1996 and 1998 the provisions of the TUPA regarding expropriation for public use were superseded by other rules, but it was provided that these provisions, although repealed, would continue to govern pending expropriation proceedings in which the State had already taken possession of the expropriated property.

18. The Restitution of Property Expropriated under Building Planning Legislation Act was adopted in 1992. In section 1 (1) it provided for the revocation of previous expropriations and the restitution of properties where certain criteria had been met, in particular where the construction works for which the property had been expropriated had not commenced. Restitution could only take effect upon the return of any compensation received at the time of expropriation (sections 5 (1) and 6 (1) of the Act).

COMPLAINT

19. The applicants complained under Article 1 of Protocol No. 1 of the failure of the State to provide them with the flats due to them as compensation for their expropriated property.

THE LAW

20. The applicants complained 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."

21. The Government contested the complaint. They argued, among others, that the applicants had failed to exhaust the available domestic remedies because they had failed to initiate re-compensation procedure under section 103 (5) of the TUPA (see paragraph 16 above).

22. The applicants disagreed and reiterated their complaint. As regards the Government's objection, they stated that they had "on numerous occasions" sought re-compensation, but to no avail. They referred in particular to their request addressed in 1996 to the Sofia mayor, and to his reply (see paragraph 10 above). They argued at the same time that recourse to the procedure at issue was "pointless" for them and "ineffective" because the State-owned enterprise which had had to construct their flats no longer existed.

23. The Court will examine the Government's objection, but not from the point of view of exhaustion of domestic remedies; it will take the arguments raised by the parties into account when assessing whether the Bulgarian authorities were responsible for excessive delays in providing compensation to the applicants, and whether they demonstrated willingness and preparedness to solve the problem.

24. The Court has examined complaints concerning delays in the provision of compensation for formerly expropriated properties in a number of cases, starting with the leading case of *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). As in these cases (see, for example, *Kirilova and Others*, § 105, and *Lazarov*, § 28), the Court finds that the 1979 decision for the expropriation of the applicants' father's property, stating that the applicants' father and the first applicant were to receive two flats in compensation (see paragraph 5 above), created an entitlement for them to claim these flats which qualifies as a "possession" within the meaning of Article 1 of Protocol No. 1.

25. The applicants have not yet received the flats due to them, thirty-seven years after the 1979 expropriation decision, twenty-four of which, namely after 7 September 1992 when the Convention entered into force in respect of Bulgaria, within the Court's temporal jurisdiction.

26. In assessing whether similar delays breached Article 1 of Protocol No. 1, in the cases cited above the Court took into account in particular the domestic authorities' attitude and the demonstration or not on their part of any preparedness to solve the problem. It criticised those authorities for their reluctance to find a solution and their opposition to any attempts on the part of the applicants to compel them to fulfil their obligations (see, for example, *Kirilova and Others*, §§ 109 and 121), and on this basis reached a conclusion that the applicants' right of property had been breached.

27. However, the present case is different and the Court is not satisfied that the lengthy delay in providing compensation to the applicants has been shown to be due to any unwillingness on the part of the authorities to offer a solution. The Court observes that soon after the Convention entered into force for Bulgaria in 1992 the plot of land on which the building with the applicants' flat was to be constructed was returned to its previous owners under restitution legislation and the building's construction was called off (see paragraphs 8-9 above). After that, in view of the applicable domestic rules, enabling the authorities to discharge their obligation to provide two flats to the applicants' father and the first applicant, respectively the two applicants, required that the applicants or their father initiate a re-compensation procedure (aimed at allotting to them different flats), by addressing the Sofia mayor with an express notarised request in that regard (see paragraph 16 above).

28. However, despite claiming that they had done this "on numerous occasions" (see paragraph 22 above), the applicants have not shown that they, respectively their father, ever duly followed the procedure prescribed by law. In 1996 the applicants' father and the first applicant submitted to the Sofia mayor a re-compensation request, but it is unclear whether the document was notarised and thus whether it met the formal statutory requirements (see paragraph 10 above). Moreover, it has not been shown that the applicants' father or the first applicant ever challenged before the courts the apparent refusal of the mayor to take the necessary action. It has not been claimed that any re-compensation was sought after 1996. The

applicants argued that pursuing that route would have been "pointless" and "ineffective" because the State-owned enterprise which had had to construct their flats no longer existed (see paragraph 22 above). However, in the absence of any assessment or decision of the authorities in that regard the Court cannot speculate as to whether this would have been a genuine obstacle.

29. The Court observes that in its judgment in the case of *Kirilova and Others* (cited above, § 111) it noted that the applicants' attempts to obtain re-compensation had been unproductive. However, it did not conclude that the possibility for re-compensation was in itself an ineffective remedy, and in the present case initiating a re-compensation procedure appears to have been the only way out of the standstill obtained after the restitution of the plot of land where the flats due in compensation were to be constructed and the abolition of the construction project. Whether the authorities were willing to resolve the problem and discharge their obligations or not, the applicable rules did not permit them to take any steps in that regard without a valid re-compensation request.

30. Instead of lodging such a request, the applicants engaged in different other procedures, challenging the Sofia chief architect's decision to call off the construction of the building where their flats were to be located and contesting the restitution of the respective plot of land (see paragraphs 13-14 above). While it does not wish to question their entitlement to take these actions, it is unclear to the Court how the applicants could have through them obtained the compensation due to them. In particular, even had they been successful in the proceedings brought by the persons to whom the plot of land had been restituted (see paragraph 14 above), the applicants would have obtained a finding as to the land's property which would not have been binding on the authorities and could not have prompted them to construct the building where the applicants' flats were to be located.

31. Accordingly, the Court cannot conclude that after the Convention's entry into force the authorities were responsible for any substantial delay in providing compensation to the applicants, or that they have been shown to be unwilling to resolve the situation. As noted earlier, to unblock the standstill situation and enable any effective provision of compensation, domestic law at the time required that the applicants initiate re-compensation procedure, which they failed to do in accordance with the applicable requirements.

32. It follows that 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,

Declares the application inadmissible.

Done in English and notified in writing on 13 October 2016.

Milan Blaško
Deputy Registrar

Khanlar Hajiyev
President