CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF TODOROVA AND OTHERS v. BULGARIA

(Applications nos. 48380/99, 51362/99, 60036/00 and 73465/01)

JUDGMENT
(just satisfaction)

STRASBOURG

24 April 2008

FINAL

24/07/2008

This judgment may be subject to editorial revision.

In the case of Todorova and Others v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Karel Jungwiert,
Volodymyr Butkevych,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska, *judges,*
and Claudia Westerdiek, *Section Registrar,*

Having deliberated in private on 1 April 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in four applications against the Republic of Bulgaria lodged by Bulgarian nationals under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") as follows: application no. 48380/99, *Todorova*, on 4 February 1999; application no. 51362/99, *Eneva and Dobrev*, on 13 May 1999, application no. 60036/00, *Bogdanovi*, on 4 January 2000; and application no. 73465/01, *Tzilevi*, on 11 May 2001. The names of the applicants and their representatives are indicated below. The applicants in applications nos. 48380/99 (*Todorova*) and 60036/00 (*Bogdanovi*) were granted legal aid.

2. In a judgment delivered on 15 March 2007 ("the principal judgment") the Court, having joined the above four applications with five others, held that in respect of those four applications there had been violations of Article 1 of Protocol No. 1 to the Convention (see *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01 and 194/02, §§ 217-228 and 236-249, 15 March 2007).

3. Under Article 41 of the Convention, the applicants sought just satisfaction for pecuniary and non-pecuniary damage and costs. The Government did not comment.

4. Since the question of the application of Article 41 of the Convention was not ready for decision as regards pecuniary and non-pecuniary damage, the Court reserved it and invited the Government and the applicants to submit, within two months of the date on which the judgment became final, their written observations on that issue and, in particular, to notify it of any agreement they might reach (ibid., point 6 of the operative provisions).

5. The applicants filed observations.

THE LAW

6. 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 and non-pecuniary damage

1. The Court's approach

7. Where the Court has found a breach of the Convention in a judgment, the respondent State is under a legal obligation to put an end to that breach and make reparation for its consequences. If national law does not allow – or allows only partial – reparation to be made, Article 41 empowers the Court to afford the injured party such satisfaction as appears to it to be appropriate. The Court enjoys a certain discretion in the exercise of that power, as the adjective "just" and the phrase "if necessary" attest. In particular, if one or more heads of damage cannot be calculated precisely or if the distinction between pecuniary and non-pecuniary damage proves difficult, the Court may decide to make a global assessment (see *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 29, ECHR 2000-IV).

8. As regards pecuniary damage, the basis on which the Court proceeds depends on the nature of the breach found. Illegal and arbitrary dispossessions of property in principle justify *restitutio in integrum* and, in the event of non-restitution, payment of the up-to-date full value of the property (see *Papamichalopoulos and Others v. Greece* (Article 50), judgment of 31 October 1995, Series A no. 330-B, and *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, ECHR 2001-I). However, where the failure to strike a fair balance between the public interest and the individual's rights, rather than illegality, was the basis of the violation found, just satisfaction must not necessarily reflect the idea of wiping out all the consequences of the interference in question and compensation need not always equal the full value of the property. Legitimate objectives of public interest, such as measures of economic reform or measures designed to achieve greater social justice, may call for less than reimbursement of the full market value. Less than full compensation may be equally, if not *a fortiori*, called for where the taking of property is resorted to with a view to completing fundamental changes of a country's constitutional system (see

James and Others v. the United Kingdom, judgment of 21 February 1986, Series A no. 98, p. 36, § 54, and *The Former King of Greece and Others v. Greece* [GC] (just satisfaction), no. 25701/94, §§ 75-78, 28 November 2002).

9. In its principal judgment in the present case, the Court drew a distinction between cases in which the interference with the applicants' property rights fell within the scope of the legitimate aims pursued by the Restitution Law but failed to strike a fair balance between the public interest and the individuals' rights (the cases of *Bogdanovi* and *Tzilevi*) and cases in which there had been an excessively extensive application of the Restitution Law in disregard of the principle of legal certainty (the cases of *Todorova* and *Eneva and Dobrev*). In respect of the first group, the Court considered that the requisite fair balance between the public interest and the individuals' rights required adequate compensation (see paragraphs 220 and 224 of the principal judgment). In respect of the second group, the Court stated that nothing short of compensation reasonably related to the market value of the property would suffice (see paragraphs 238 and 248 of the principal judgment).

10. The Court therefore considers that in the first group of cases, in view of the nature of the breach found, it must fix a lump sum in respect of pecuniary and non-pecuniary damage with reference to the value of the property and all other relevant circumstances, such as the hardship suffered by the applicants.

11. In respect of the second group of cases, the Court finds it appropriate to make separate awards in respect of pecuniary and non-pecuniary damage. The amount to be awarded under the head of pecuniary damage must be reasonably related to the market value of the property at present. In determining this amount the Court will take into account the valuations submitted by the parties and information at its disposal about the relevant property market.

12. In addition, having regard to the very special circumstances of the present case, which concerns legislation and practice relating to a unique transition from a totalitarian regime to a democratic society, recourse to equitable considerations is called for in respect of all heads of damage and in each case (see, *The Former King of Greece and Others* (just satisfaction), cited above, § 79, and *Brumărescu* (just satisfaction), cited above, § 24).

2. Application of that approach in the particular cases

(a) The case of *Todorova*

13. The property which was taken from the applicant in violation of Article 1 of Protocol No. 1 to the Convention was a plot of land of 352 square metres located in the centre of Stara Zagora and two small one-

storey houses built on that plot, covering areas of 86 and 46 square metres respectively.

14. The applicant claimed EUR 258,000 in respect of pecuniary damage. She submitted two valuation reports by an expert commissioned by her. In his first report, dated February 2006, the expert stated that the value of the plot was EUR 160,500. In his second report, dated August 2007, the expert considered that the value of the property was EUR 258,000. In both reports the expert based his assessment on the assumption that the plot would be purchased by an investor wishing to demolish the existing house and erect a five-storey building of offices and apartments on the land. The expert also assumed that the hypothetical investor would agree to certain contractual terms, such as a 30% owner's share in the new building.

15. The applicant also claimed EUR 10,000 in respect of non-pecuniary damage.

16. The Government did not comment.

17. In respect of pecuniary damage, applying the approach defined above (see paragraph 11 above), the Court must determine a sum reasonably related to the market value of the property taken from the applicant in violation of Article 1 of Protocol No. 1.

18. It notes that the assessment offered by the applicant is not fully reliable as it is based on speculation about possible future events. In addition, the applicant has not shown that the relevant authorities would authorise the construction of a five-storey building on the plot at issue. Furthermore, it does not appear that real-estate prices in Stara Zagora have increased by 60% between February 2006 and August 2007, as the applicant appears to suggest.

19. Having regard to the information at its disposal about the real-estate market in the town of Stara Zagora and the circumstances of the case, the Court considers that the sum of EUR 80,000 represents compensation reasonably related to the market value of the property.

20. As regards non-pecuniary damage, having regard to the circumstances of the case and deciding on an equitable basis, the Court awards EUR 3,000 to the applicant.

(b) The case of *Eneva and Dobrev*

21. The property taken from the applicants was a three-room apartment of 93 sq. m on the third floor of a three-storey building constructed in 1938 in the centre of Varna.

22. The applicants claimed the equivalent of approximately EUR 140,850 in respect of the difference between the market value of the apartment and the sum (EUR 18,800) they had obtained in 2004 through the sale of their compensation bonds. They submitted two valuation reports by an expert commissioned by them. In his first report, dated February 2006, the expert stated that the market value of the apartment was EUR 127,385.

In his second report, dated August 2007, the expert considered that the value of the property was EUR 159,650.

23. The applicants also claimed EUR 5,000 in respect of improvements they had made in the apartment between 1964 and 1999 (such as renovation of the electrical and sewage systems and tiling), EUR 2,000 in respect of furniture damaged when they had moved out and EUR 26,900 for loss of opportunities as the applicants had been unable to use the apartment since 1999.

24. The applicants also claimed EUR 20,000 in respect of non-pecuniary damage.

25. The Government did not comment.

26. In respect of pecuniary damage, applying the approach defined above (see paragraph 11 above), the Court must determine a sum reasonably related to the market value of the property taken from the applicants in violation of Article 1 of Protocol No. 1.

27. In determining the amount that would represent compensation reasonably related to the market value of the property, the Court notes that according to the assessment made by a certified expert in August 2001, the market value of the apartment at issue at that time was the equivalent of approximately EUR 36,500, whereas according to the valuation report submitted by the applicants its market value was EUR 127,385 in February 2006 and EUR 159,650 in August 2007. While it is true that real-estate prices in Bulgaria increased significantly between 2001 and 2007, the Court considers that the figures put forward by the applicants are excessive and not fully reliable.

28. Having regard to information at its disposal about the real-estate market in the town of Varna and the fact that in 2004 the applicants obtained partial compensation in the amount of EUR 18,800, the Court awards the applicants EUR 50,000 in respect of pecuniary damage.

29. As regards non-pecuniary damage, having regard to the circumstances of the case and deciding on an equitable basis, the Court awards EUR 3,000 to each of the applicants (EUR 6,000 in total).

(c) The case of *Bogdanovi*

30. The property the applicants lost was a two-room apartment of 92 sq. m on the third floor of a three-storey building in the centre of Burgas. The building was constructed in 1940.

31. The applicants claimed EUR 64,200 in respect of the difference between the market value of the apartment and the amount (EUR 5,800) they had obtained in 2001 when they had sold their compensation bonds. The applicants submitted two valuation reports by an expert commissioned by them. In his first report, dated July 2005, the expert stated that the value of the apartment was EUR 58,000. In his second report, dated August 2007, the expert considered that the value of the property was EUR 70,000.

32. The applicants claimed, in addition, EUR 5,400 in respect of improvements they had made in the apartment, EUR 5,700 in respect of the rent they had had to pay to the former owners (see paragraph 80 of the principal judgment) and EUR 2,800 in respect of the renovation of the apartment the applicants had moved into in November 2005, losses related to the removal of their personal effects and expenses incurred in the domestic judicial proceedings. The applicants also claimed EUR 25,000 in respect of non-pecuniary damage.

33. The total amount claimed in respect of pecuniary and non-pecuniary damage was thus approximately EUR 108,900. The Government did not comment.

34. The Court notes that the case of *Bogdanovi* falls in the category of cases where it is appropriate, in accordance with the approach set out above (see paragraph 10 above), to fix a lump sum in respect of pecuniary and non-pecuniary damage. That would secure adequate compensation in the circumstances of the case.

35. To determine that amount, the Court observes that in 2001 a certified expert assessed the market value of the applicants' apartment at the equivalent of approximately EUR 32,500 (see paragraph 82 of the principal judgment) but also takes note of the increase in real estate prices after 2001 and the valuation reports submitted by the applicants. The fact that the applicants were not provided with municipal housing and suffered additional hardship must also be taken into consideration (see paragraphs 80, 81 and 83 of the principal judgment).

36. Having regard to the circumstances of the case, the information at its disposal about the real-estate market in the town of Burgas and the fact that in 2001 the applicants obtained partial compensation in the amount of EUR 5,800, the Court awards the applicants jointly EUR 47,000 in respect of all pecuniary and non-pecuniary damage.

(d) The case of *Tzilevi*

37. The property the applicants lost was a two-room apartment measuring 60 sq. m on the third floor of a five-storey building in the centre of Sofia.

38. The applicants claimed EUR 77,050 in respect of the market value of the apartment. They submitted two valuation reports by an expert appointed by them. In his first report, dated February 2006, the expert stated that the value of the apartment was EUR 52,220. In his second report, dated September 2007, the expert considered that the value of the property was EUR 76,180.

39. The applicants stated that this amount should be awarded to them in full as they had not received any compensation from the State. In their view the fact that they had failed to take advantage of the bonds compensation scheme (see paragraph 94 of the principal judgment) should not be held

against them. In particular, the applicants' decision to forgo this possibility was understandable as they were entitled to full compensation, whereas at the relevant time bonds could secure not more than 10% or 15% of the value of the property. Furthermore, the respondent Government were under a duty to provide full compensation and the applicants would not unfairly enrich themselves if they were to receive an award reflecting the full value of the apartment.

40. The applicants also claimed EUR 3,893, the amount they might be ordered to pay the persons restored as the owners for use of the apartment (see paragraph 93 of the principal judgment). The applicants also claimed EUR 30,000 for the pain and suffering caused to them.

41. The total amount claimed in respect of pecuniary and non-pecuniary damage was thus EUR 110,943.

42. The Government did not comment.

43. The Court observes at the outset that in the principal judgment it stated that the applicants' failure to use the bonds compensation scheme would have to be taken into consideration under Article 41 of the Convention (see paragraph 227 of the principal judgment).

44. It notes that had the applicants made use of that scheme, they could have obtained between 15% and 25% of the value of the apartment. At the relevant time, the bonds scheme did not afford the applicants a clear and foreseeable possibility to obtain adequate compensation (see paragraphs 136, 226 and 227 of the principal judgment).

45. The Court reiterates that it is empowered to afford just satisfaction under Article 41 of the Convention where national law does not allow – or allows merely partial – reparation to be made. In the specific circumstances obtaining in the *Tzilevi* case, having regard to the unavailability of adequate compensation at the relevant time, the Court considers that the applicants' failure to seek the partial compensation available to them should not result in a refusal to award them just satisfaction. This conclusion is without prejudice to the Court's approach in other situations where – unlike *Tzilevi* – the bonds compensation scheme or other redress may prove to be adequate (see, for example, the developments described in paragraphs 137 and 139 of the principal judgment).

46. The Court considers, however, that it must apply an appropriate reduction of the just satisfaction award on account of the applicants' failure to make use of the possibility to obtain partial compensation. It accepts that the reduction must be modest, having regard to the fact that the relevant national legislation on compensation was subject to frequent amendments in contradictory directions and was thus unpredictable and generated legal uncertainty (see paragraphs 165 and 191 of the principal judgment).

47. Applying the approach set out above (see paragraphs 10 and 43-45 above), the Court finds it appropriate to fix a lump sum in respect of pecuniary and non-pecuniary damage which would secure adequate

compensation in the circumstances of the case and apply an appropriate reduction.

48. To determine the amount to be awarded, the Court notes that in 2001 a certified expert assessed the market value of the apartment at EUR 23,000 (see paragraph 94 of the principal judgment) and that in February 2006 and September 2007 an expert commissioned by the applicants estimated its market value at EUR 56,470 and EUR 76,180 respectively. The fact that the applicants were not provided with municipal housing and suffered additional hardship must also be taken into consideration (see paragraphs 92 and 93 of the principal judgment).

49. Having regard to the above, all the circumstances of the case and information at its disposal about the real-estate market in Sofia, the Court awards the applicants EUR 41,000 in respect of pecuniary and non-pecuniary damage.

B. Costs

50. Ms Todorova claimed EUR 128 for the cost of the second report on the value of the property (see paragraph 14 above). Mr Tzilev and Ms Tzileva claimed jointly EUR 210 in legal fees for three hours of legal work on the just-satisfaction procedure at the hourly rate of EUR 70. The remaining applicants did not submit claims for costs incurred after the delivery of the principal judgment.

51. The Government did not comment.

52. The Court awards EUR 128 to Ms Todorova and EUR 210 jointly to Mr Tzilev and Ms Tzileva.

C. Default interest

53. The Court considers it appropriate that the default interest 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. *Holds*

(a) that the respondent State is to pay the respective applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs (BGN) at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicants:

(i) in the case of *Todorova* (application no. 48380/99), EUR 80,000 (eighty thousand euros) in respect of pecuniary damage, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage and EUR 128 (one hundred twenty eight euros) in respect of costs and expenses;

(ii) in the case of *Eneva and Dobrev* (application no. 51362/99), EUR 50,000 (fifty thousand euros) in respect of pecuniary damage and EUR 6,000 (six thousand euros) in respect of non-pecuniary damage;

(iii) in the case of *Bogdanovi* (application no. 60036/00), EUR 47,000 (forty-seven thousand euros) in respect of pecuniary and non-pecuniary damage;

(iv) in the case of *Tzilevi* (application no. 73465/01), EUR 41,000 (forty one thousand euros) in respect of pecuniary and non-pecuniary damage and EUR 210 (two hundred and ten euros) 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;

2. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 24 April 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President