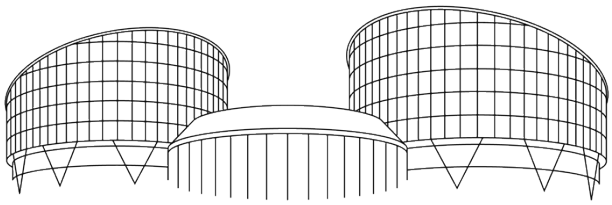

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 75873/01
by Stoyanka Nikolova ERMENKOVA
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 14 June 2011 as a Chamber composed of:

Nicolas Bratza, *President,*
Sverre Erik Jebens,
Päivi Hirvelä,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić,
Vincent A. De Gaetano, *judges,*

and Fatoş Aracı, *Deputy Registrar,*

Having regard to the above application lodged on 1 August 2001,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Stoyanka Nikolova Ermenkova, is a Bulgarian national who was born in 1947 and lives in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Kotzeva, of the Ministry of Justice.

A. The circumstances of the case

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

In 1974 the applicant and her former husband purchased from the local municipality a one-bedroom flat of 30 square metres in a three-storey building. The municipality had owned the building and the plot of land (part of which served as a yard) since 1949, when it was nationalised.

In accordance with the usual practice in cases of sale of flats on municipal land, the buyers also obtained a 5.82% portion of the construction rights over the entire plot. Following the applicant's divorce in 1989 she became the sole holder of the title obtained in 1974.

In 1992 the applicant requested from the local municipality an authorisation to construct a small house of approximately 30 square metres on a portion of the yard.

The municipality processed the request. On 3 October 1992 the competent official issued an authorisation to proceed with the elaboration of a plan by an architect. The document containing the authorisation referred to the "construction rights conveyed on N. Ermenkova" under the 1974 contract. It appears that no consideration was given to the fact that these rights did not entitle the applicant to construct a house in the yard.

On 14 May 1993 a building permit was issued.

When issuing the authorisation and the permit, the relevant officials apparently overlooked or disregarded the fact that on 16 October 1992 the land at issue had been denationalised pursuant to a 1992 law on the restitution of nationalised property and had become the property of a Mr T., the heir of the person from whom it had been nationalised in 1949.

The applicant became aware that the property had been denationalised on an unspecified date.

In June 1993 Mr T. asked the municipal authorities to order the suspension of the construction works undertaken by the applicant. In reply the municipality informed him that a building permit had been issued to the applicant.

The house was constructed rapidly and on an unspecified date in 1993 the applicant requested from the local municipality approval of the construction works and authorisation for the use of the house.

This was refused on the grounds that the applicant had never had construction rights over the entire plot and that in any event the land had been private property at the time when the 1993 building permit had been issued. It followed that the permit had been issued unlawfully.

On 8 May 1996 the applicant brought an action against the municipality under the State Responsibility for Damage Act (the SMRDA, the Act's title having been amended later) claiming that she had suffered damage occasioned by unlawful acts on the part of the municipality. Her initial

claim was for 10,000,000 “old” Bulgarian levs (BGL). Later, she increased her claim to BGL 14,000,000.

The Sofia City Court admitted documentary evidence and commissioned expert reports on the value of the house. The court asked the experts to determine its market value as of May 1996, when the action was brought.

In their report of March 1998 the experts concluded that that value was BGL 860,000. At the hearing held in October 1998, in reply to additional questions, the experts added that the up-to-date market value of the house was BGL 14,200,000. The difference was the result of the approximately fifteen-fold devaluation of the Bulgarian currency between mid-1996 and mid-1997.

By a judgment of 6 November 1998 the Sofia City Court found that the municipality had acted unlawfully in that it had issued a building permit in disregard of the fact that the property had been denationalised and that the applicant had never been authorised by the owner to build on his land. Since the denationalisation had been ordered by the same municipality, the relevant officials had known about it. The applicant had incurred expenditure to build a house but could not become its owner. The municipality was therefore liable to compensate her for the damage directly related to the unlawful act. The assessment of that damage, in accordance with the relevant law, had to be based on the market value of the house as of May 1996, when the claim had been brought, plus interest since that date. The value in question was BGL 860,000, as established by the experts. The court awarded that sum to the applicant, plus interest.

Noting that the applicant had claimed BGL 14,000,000 and applying section 10 § 2 of the SMRDA, the court ordered the applicant to pay BGL 525,600 in court fees (the equivalent of 525.60 new Bulgarian levs (BGN)), which represented a fixed 4% fee on the rejected part of the claim.

As the municipality did not appeal, the award of BGL 860,000 (the equivalent of BGN 860) in the applicant’s favour became enforceable towards the end of 1998.

The applicant appealed, claiming, *inter alia*, that she was entitled to compensation for her actual loss and that the Sofia City Court had awarded an amount which did not reflect her actual loss. The applicant also challenged the Sofia City Court’s decision concerning court fees and costs.

By a judgment of 3 March 2000 the Sofia Appeal Court upheld the Sofia City Court’s judgment.

The court noted that since the municipality had not appealed it could not re-examine the question as to whether the municipality was indeed liable in the particular case, and had to proceed on the basis that it was.

As to the amount of compensation, the relevant principles in tort law mandated that it had to be determined by reference to the moment when the loss had occurred. In the applicant’s case the loss had occurred no later than the date on which the applicant had brought her action against the

municipality. In a separate decision dated 30 March 2000, the court ordered the applicant to pay BGN 262 in court fees in respect of the appeal proceedings.

The applicant's ensuing appeal on points of law was rejected by the Supreme Court of Cassation on 6 March 2001. The court stated, *inter alia*, that the lower courts had applied correctly the relevant law concerning the relevant date for the assessment of the actual damage. Their conclusions were in conformity with the settled judicial practice.

The applicant has not submitted a calculation on the final amount of the compensation and interest due to her under the final judgment of the Sofia City Court. Seeing that between mid-1996 and mid-1997 the statutory interest rate in Bulgaria was very high, reaching 300 % per annum in September 1996, that amount must have been not lower than the equivalent of BGN 1,500.

COMPLAINTS

The applicant complained that the courts had not compensated her adequately for the pecuniary damage she had suffered as a result of the fact that the municipality issued her with a defective building permit. That was the result of their finding that compensation should be paid with reference to the date on which the claim had been brought and, also, of excessive court fees. The applicant relied on Article 1 of Protocol No. 1 to the Convention.

THE LAW

The Court considers that the applicable provisions are Article 6 § 1 of the Convention and Article 1 of Protocol No. 1. In so far as relevant, they read as follows.

Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing."

Article 1 of Protocol No. 1

"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."

The Government submitted copies of documents without commenting on the applicant's complaints.

The Court notes that the Bulgarian courts applied established practice in determining the date on which the pecuniary loss claimed by the applicant had to be assessed. The courts also awarded her interest. Their judgments do not appear arbitrary.

It cannot be considered, therefore, that the applicant had a legitimate expectation of obtaining the up-to-date value of the house she had constructed. There was no such right under Bulgarian law. It follows that her complaint did not concern a "possession" within the meaning of Article 1 of Protocol No. 1 to the Convention.

In so far as the applicant refers to the allegedly excessive court fees, the Court observes that such a complaint may in principle give rise to an issue concerning the applicant's right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

It is true that in *Stankov v. Bulgaria* (no. 68490/01, ECHR 2007-) the Court found a violation of Article 6 § 1 in that, despite the fact that it was very difficult for the applicant to assess in advance what sum to claim in respect of non-pecuniary damage caused by unjustified detention, he was subject to an automatic and *post hoc* liability for court fees on the dismissed part of his claim, which resulted in his practically losing the entire compensation awarded (ibid., §§ 49-67). Since *Stankov*, the court fees' system in question has been abandoned in Bulgaria and replaced, in cases concerning claims for damages against State or municipal bodies, by a simple fee not dependent on the value of the claim (*Slavcho Kostov v. Bulgaria*, no. 28674/03, § 22, 27 November 2008).

The Court cannot exclude that in certain circumstances, if there were particular difficulties for a litigant to quantify a claim for pecuniary damage – such damage being at issue at the present case –, a court fees system similar to the system at issue in *Stankov* may give rise to an unjustified restriction on the litigant's right of access to a court.

However, there are no such circumstances in Ms Ermenkova's case. She has not argued that in the proceedings she instituted a reasonably competent legal counsel would have had difficulty determining whether it was reasonable to claim the up-to-date value of the property, as she did, or its value as of the date when she brought her claim. It is significant in this respect that the Supreme Court of Cassation considered that there was a settled judicial practice on this issue. It follows that, unlike *Stankov*, the applicant could have reduced her liability for court fees by quantifying her claim on the basis of the established practice.

The Court also notes that the sum awarded to the applicant included interest, which was intended to compensate for the passage of time after the relevant date. Although the applicant has not offered a calculation of the final amount of the award plus interest, publicly available information on

statutory interest rates during the relevant period appear to suggest that the applicant did not lose all her pecuniary award by having to pay court fees, as she may be understood as arguing.

In sum, the applicant's complaints are partly incompatible *ratione materiae* with the provisions of the Convention and, as regards the remainder, manifestly ill-founded within the meaning of Article 35 § 3(a). It follows that the application must be rejected in accordance with Article 35 § 4.

For these reasons, the Court by a majority

Declares the application inadmissible.

Fatoş Aracı Deputy Registrar	Nicolas Bratza President