



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

THIRD SECTION

**CASE OF DJIDROVSKI v. THE FORMER YUGOSLAV REPUBLIC
OF MACEDONIA**

(Application no. 46447/99)

JUDGMENT

STRASBOURG

24 February 2005

FINAL

24/05/2005

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Djidrovski v. the Former Yugoslav Republic of Macedonia,

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

Mr B.M. ZUPANČIČ, *President*,

Mr J. HEDIGAN,

Mr L. CAFLISCH,

Mrs M. TSATSA-NIKOLOVSKA,

Mr V. ZAGREBELSKY,

Mrs A. GYULUMYAN,

Mr DAVID THÓR BJÖRGVINSSON, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having deliberated in private on 1 February 2005,

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

PROCEDURE

1. The case originated in an application (no. 46447/99) against the former Yugoslav Republic of Macedonia lodged with the European Commission of Human Rights (“the Commission”) under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Macedonian national, Mr Dimitrija Djidrovski (“the applicant”), on 1 September 1998.

2. The applicant, who had been granted legal aid, was initially represented by Mr D. Veselinski, who separately introduced an application with the Court (*Veselinski v. the former Yugoslav Republic of Macedonia*, application no. 45658/99). As of 26 November 2002 the applicant was represented by Mr G. Dragoman, a lawyer practising in Skopje. The Macedonian Government were represented by their Agent, Mrs R. Lazarovska-Gerovska.

3. The applicant alleged a violation of his property rights under Article 1 of Protocol No. 1 to the Convention in that the decisions of the Ministry of Defence and of the Supreme Court interfered with his right, as a former army serviceman, to purchase an apartment with a price adjustment. In addition, he alleged that he was discriminated against in comparison to other army servicemen who had purchased the apartments at a reduced price.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that

would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

6. Having consulted the parties, the President of the Chamber decided that in the interests of the proper administration of justice, the proceedings in the present case should be conducted simultaneously with those in the case of *Veselinski v. the former Yugoslav Republic of Macedonia* (application no. 45658/99) (Rule 42 § 2).

7. By a decision of 11 October 2001 the Court declared the application partly admissible.

8. The applicant and the Government each filed observations on the merits (Rule 59 § 1) and replied to those of the other party. The Chamber decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

9. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Third Section (Rule 52 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1923 and lives in Skopje. He worked as a pilot in the Yugoslav Army until he retired in 1968.

A. Background

11. In former Yugoslavia, the citizens used to pay a tax for housing. On the basis of the accumulated funds the State constructed “socially owned” apartments which were then rented to individuals at legally fixed rates.

12. The Yugoslav Army was the single army on the territory of the former Yugoslavia governed by laws which were applicable throughout former Yugoslavia. The applicant, as an officer of the Yugoslav Army, paid monthly contributions from his salary to the Yugoslav Army for the construction of army apartments. All army servicemen were entitled to live in army apartments as tenants.

13. On 28 August 1968 the applicant ceased to be an active officer of the Yugoslav Army under an early retirement scheme. At that time, he lived in Belgrade, as a tenant in an apartment which belonged to the army. On an unspecified date the applicant, having found a job in Skopje, sought to obtain the tenancy of an army apartment there. In December 1979, under an agreement between the Yugoslav Army and the Macedonian Council of

Ministers, the Socialist Republic of Macedonia (at that time a member of the Yugoslav Federation) obtained the possession of the applicant's army apartment in Belgrade in exchange for an apartment in Skopje, which remained the property of the Socialist Republic of Macedonia but was to be used by the Yugoslav Army. In July 1980 the applicant moved into the apartment in Skopje.

14. On 29 December 1990 the Federal Assembly of the Socialist Federal Republic of Yugoslavia enacted a Law on Housing of the Army Servicemen (*Закон за станбено обезбедување во ЈНА*) (the "Z.S.O.J.N.A."), according to which army servicemen, current and retired, could purchase apartments in which they lived with a price adjustment for the amount of the paid contributions for the construction of army apartments and for development of the construction land. Section 26 of that law provides that the same purchase conditions apply to apartments which do not belong to the army, as it was in the case of the applicant. According to regulations issued by the Yugoslav Federal Ministry, the price difference was to be paid by the federal army (see paragraphs 43-46 below).

15. Following the fall of Yugoslavia and a referendum held on 8 September 1991, the former Yugoslav Republic of Macedonia declared independence. On 17 November 1991 it adopted a Constitution (*Устав на РМ*) and the Law on the Implementation of the Constitution (*Уставен Закон за спроведување на Уставот*). According to the Constitution the laws from former Yugoslavia remain in force, except for the laws regulating the organisation and competence of the former Yugoslav federal organs. On 21 February 1992 the Macedonian President and the General of the Yugoslav Army concluded an agreement for the withdrawal of the Yugoslav Army from Macedonian territory.

16. On 28 February 1992 the Macedonian Government concluded an Agreement for Settlement of Claims and Obligations in Respect of Real Property (*Спогодба за правата и обврските во врска со примопредажбата на недвижностите на територија на Република Македонија*) ("the S.P.O.V.P.N.T.R.M.") with the Federal Yugoslav Ministry of Defence. According to this agreement the Macedonian Ministry of Defence took over all the obligations of the Yugoslav Army in respect of army apartments, including the obligation to sell these apartments with a price reduction. The Macedonian Government in 1992 and 1994 enacted regulations implementing this agreement. In 1992 the Macedonian Government enacted Regulations on the Terms of Purchase of the Apartments Obtained by Succession from the Yugoslav Army (*Уредба за продажба на државниот стамбен фонд наследен од ЈНА*) ("U.P.D.S.F.N.J.A."), according to which present and former army servicemen living in apartments owned by the Macedonian Ministry of Defence, could purchase them under the Z.S.O.J.N.A.

17. From the Ministry of Defence's decision of 12 June 1992 it appears that the Ministry exchanged the title of its apartments which were inhabited by civilians with the title of the apartments owned by the Housing Fund ("ПУИИ") which were inhabited by servicemen. Thereby, the servicemen were able to exercise the right under the Z.S.O.J.N.A. to purchase the apartments at a reduced price. However, this exchange was limited and concerned only six apartments owned by the Housing Fund and twenty owned by the Ministry. No details were provided as to the criteria concerning the exchange.

18. In 1993 an amended version of the 1990 Law on the Sale of Socially Owned Apartments (*Закон за продажба на станови во општествена сопственост*) ("the Z.P.S.O.S.") was promulgated in the Official Gazette. Under the law their tenants were entitled to purchase them on credit and at a beneficial price. Unlike the Z.S.O.J.N.A., the law did not provide for a price adjustment for the amount of the contributions made towards the construction of "socially owned" apartments and the development of the construction land, despite the fact that the tenants had also paid them.

19. On 26 June 1996 the Constitutional Court abrogated the Z.S.O.J.N.A. without retroactive effect and the respective Government's Regulations on the ground that they had been contrary to the 1991 Constitution. In particular, the court stated that: (a) the Yugoslav Army, its "housing fund" and the "social ownership" no longer existed; (b) the 1991 Constitution had abolished all the privileges enjoyed by army servicemen; and (c) the Z.S.O.J.N.A. had created an unequal treatment in comparison to the citizens who were entitled to purchase their apartments under the Z.P.S.O.S. The S.P.O.V.P.N.T.R.M. was not mentioned in the Constitutional Court's decision.

B. The applicant's request to purchase his apartment in Skopje

20. Between 1992 and 1994, the applicant requested the Macedonian Ministry of Defence to purchase the apartment in Skopje where he had been living since 1980 as a tenant of the Yugoslav Army in accordance with the Z.S.O.J.N.A. and the U.P.D.S.F.N.J.A. The Ministry of Defence informed him, and seven other servicemen of the former Yugoslav Army, that the examination of their requests had been postponed due to some formalities.

21. On 20 October 1993 the applicant and fifteen other persons asked the Constitutional Court to examine the compatibility of the Z.P.S.O.S. and the relevant regulations issued by the Ministry of Defence with the Z.S.O.J.N.A. On 29 December 1993 this was refused by the Constitutional Court.

22. On 6 February 1995 the applicant submitted another request to purchase the apartment to the President of the Republic who transmitted it to the Ministry of Defence.

23. On 22 March 1995 the Ministry of Defence informed the applicant that his request to purchase the apartment had been dismissed on the ground that the U.P.D.S.F.N.J.A. did not apply to apartments other than those which belonged to the Yugoslav Army. In particular, the Ministry stressed that Section 2 § 2 of the 1992 Regulation on the Sale of Apartments for which the Republic has Responsibilities and Rights (*Одлука за продажба на становите на кои права, должности и одговорности во поглед на располагањето има Републиката*) (“O.P.S.P.D.O.R”) provided that the U.P.D.S.F.N.J.A. did not apply to apartments for official use of the Government. The Ministry argued that on 21 September 1994 the Government had taken a similar position in respect of this issue. Therefore, the applicant would have had the right to purchase the apartment under the U.P.D.S.F.N.J.A. only if it had concerned an apartment owned by the said Ministry.

24. On 16 February 1995 the applicant instituted proceedings before the Skopje I Municipal Court (*Општински суд Скопје I*) against the Ministry of Defence, requesting that the apartment be sold to him under an adjusted price in accordance with the Z.S.O.J.N.A. He also invoked Articles 4 and 5 of the Law on the Implementation of the Constitution.

25. On 25 April 1995 the court granted the applicant’s request. The court stated, *inter alia*, that the applicant, as an army officer, had the right to purchase the apartment under an adjusted price. In particular, the purchase price should be reduced by the revalorised amount of the monthly contributions which the applicant had paid to the Federal Ministry of Defence for the construction of apartments and for development of construction land. The Municipal Court found that the Macedonian Ministry of Defence was under an obligation to pay the price difference for the apartment.

26. The Macedonian Ministry of Defence appealed against this decision on grounds that in accordance with a Government Decision the Z.S.O.J.N.A. only applied to apartments owned by the Macedonian Army.

27. On 1 February 1996 the Skopje Appellate Court (*Окружен суд Скопје*) upheld the decision of the lower court on the ground that the applicant, as a former officer of the Yugoslav Army, had paid contributions for the construction of army apartments and, therefore, was entitled to purchase an apartment under an adjusted price in accordance with the Z.S.O.J.N.A. The court held, *inter alia*, that the lower court had reasoned correctly when it had connected the benefit of purchasing an apartment under an adjusted price to the status of the applicant as a former army officer, who had been paying contributions, and not to the identity of the owner of the said apartment.

28. On 17 April 1996 the applicant and the Government concluded a purchase contract for the apartment on the basis of the Municipal and Appellate Courts’ judgments. The applicant thus purchased the apartment

with a price reduced by the amount of contributions he had paid to the former Yugoslav Army. On 15 May 1996 the Skopje I Municipal Court authorised the contract.

29. From the copy of one document issued by the Public Enterprise for Administering State Property (*Јавно претпријатие за стопанисување со стамбен и деловен простор на Република Македонија*), it may be deduced that the applicant paid for the apartment in 1996 at the latest. It is not clear whether later the Ministry of Defence reimbursed the Housing Fund the price difference for the apartment.

30. In the meantime, the Ministry of Defence filed an appeal on points of law (*ревизија*) with the Supreme Court (*Врховен суд на РМ*) against the judgment of the Appellate Court of 1 February 1996.

31. Upon the appeal on 18 December 1997 the Supreme Court quashed the lower court's judgment and dismissed the applicant's request to purchase the apartment for a reduced price.

32. The Supreme Court noted that in accordance with Article 5 § 1 of the Constitutional Law on the Implementation of the Constitution of the former Yugoslav Republic of Macedonia the federal laws of former Yugoslavia remained in force as Macedonian laws provided that they were harmonised with the Constitution. The powers which were previously exercised by the federal organs were allocated to the bodies of the former Yugoslav Republic of Macedonia. The Z.S.O.J.N.A. remained in force as Macedonian law.

33. The Supreme Court found that under the Z.S.O.J.N.A. it was for the Yugoslav Army to make up for the price difference for the adjustment of the prices of the apartments which were not owned by the Yugoslav Army. However, on 17 November 1991 the former Yugoslav Republic of Macedonia enacted its Constitution and became an independent State. Since then there was no Yugoslav Army nor was its housing fund on the territory of the former Yugoslav Republic of Macedonia. Therefore, the applicant could not have the price for his apartment reduced as there was no Yugoslav Army to cover the price difference.

34. The court did not mention at all the decision of the Constitutional Court and the S.P.O.V.P.N.T.R.M. Nor did it mention that the applicant had already purchased the apartment by contract, or that the Ministry of Defence had exchanged a number of apartments owned by the Housing Fund and inhabited by other servicemen. The applicant was served with the Supreme Court's judgment on 4 March 1998.

35. The parties have not indicated whether the applicant was formally registered as the owner of the apartment in the Land Registry (*Државен завод за геодетски работи*) after their purchase agreement had been authorised by the Municipal Court in 1996. From the documents it appears the applicant had already recorded his title over the apartment. In addition, the parties have not indicated whether the Government have taken any legal

action to enforce the Supreme Court's judgment of 18 December 1997, for example by bringing proceedings for the rescission of the 1996 purchase agreement (see paragraphs 60-65 below). There is no information that such proceedings have ever been instituted.

36. The applicant still lives in the apartment in question.

II. RELEVANT DOMESTIC LAW

A. The 1991 Constitution

37. Section 110 provides, as far as relevant, that the Constitutional Court decides on the conformity of laws with the Constitution.

38. Section 112 § 1 provides, *inter alia*, that the Constitutional Court shall repeal or invalidate a law if it determines that it does not conform to the Constitution.

39. Section 112 § 2 provides that the decisions of the Constitutional Court shall be final and executive.

B. The Law on Implementation of the Constitution (*Уставен закон за спроведување на Уставот на Република Македонија*) of 17 November 1991

40. Section 4 provides that all issues of succession arising out of the break-up of Yugoslavia shall be regulated by way of treaties with the other former republics.

41. Section 5 §§ 1 and 4 provide that the existing federal laws of former Yugoslavia shall be in force in the former Yugoslav Republic of Macedonia with the exception of the laws regulating the organisation and competence of the Yugoslav federal organs.

42. Section 6 provides that all federal laws which are inconsistent with the Macedonian Constitution shall be amended accordingly within one year from the day when the Constitution was promulgated.

C. The 1990 Law on Housing of the Army Servicemen (*Закон за станбено обезбедување во ЈНА*) enacted by the Federal Assembly of former Yugoslavia ("the Z.S.O.J.N.A.")

43. Section 1 provides that the law in question regulates the housing of present and former Yugoslav Army servicemen and their families.

44. Section 21 § 1 provides that the purchase price for an apartment owned by the Yugoslav Army shall be determined on the basis of the apartment's re-assessed construction value, its quality, equipment, location and other similar factors. The price thus determined shall be reduced by the

amortisation of the apartment, but not more than 50% of the total amount of amortisation.

45. Section 21 § 2 provides that when an apartment is purchased by an active or retired army serviceman, the purchase price shall be reduced by the adjusted (re-assessed) amount of the monthly contributions paid by the servicemen for construction of army apartments and improvement of construction land.

46. Section 26 provides that when an army serviceman mentioned in Section 21 § 2 wishes to purchase an apartment which is not owned by the army, the army shall pay to the owner of the apartment the price difference between the adjusted and the normal purchase price.

D. The Agreement for Settlement of Claims and Obligations in Respect of Real Property (*Спогодба за правата и обврските во врска со примопредажбата на недвижностите на територија на Република Македонија*) of 28 February 1992 (“the S.P.O.V.P.N.T.R.M.”)

47. According to Section 2 § 2 of that agreement, concluded between the Macedonian Ministry of Defence and the former Yugoslav Army, army apartments should be sold to army servicemen under the conditions set forth in the 1990 former Yugoslav Law on the Housing of Army Servicemen (Z.S.O.J.N.A.).

48. Section 9 of the said agreement provides that the former Yugoslav Army shall not have any right to impose further obligations on the Macedonian Ministry of Defence after the signing of the agreement.

49. Section 10 provides that all other rights and obligations which the former Yugoslav Army had on the territory of the former Yugoslav Republic of Macedonia until 28 February 1992 in connection with real property, housing fund and business premises owned by it shall be transferred to the Macedonian Ministry of Defence.

E. The 1992 Law on Defence (*Закон за одбрана*)

50. Section 134 of the Law on Defence (*Закон за одбрана*) provides that real property which was owned by the former Yugoslav Ministry of Defence on the territory of the former Yugoslav Republic of Macedonia shall become the property of the former Yugoslav Republic of Macedonia.

F. The 1990 Law on the Sale of Socially Owned Apartments (*Закон за продажба на станови во општествена сопственост*) (“the Z.P.S.O.S.”) as amended in 1993

51. Section 1 provides that this law regulates the conditions, manner and procedure for the sale of socially owned apartments. The law does not provide for a price adjustment for the amount of the paid contributions for the construction of “socially owned” apartments and for development of the construction land.

52. Section 2 provides that a decision to sell the (socially) owned apartment will be issued by its owner (the State) within 30 days from the day when this law enters into force.

53. Section 3 § 1 provides that the socially owned apartment may be sold to the tenant of that apartment or to members of his family.

54. Section 3 § 2 provides that if the owner of the apartment (the State) does not issue a decision to sell that apartment within the time limit specified in Section 2, then the holder of tenancy right may within 30 days request the appropriate court to issue a decision in non-contentious civil proceedings to replace the sale contract.

55. The law does not provide for a price adjustment for the amount of the paid contributions for the construction of “socially owned” apartments and for development of the construction land.

G. The 1977 Code of Civil Procedure (*Закон за парнична постапка*) applicable at that time

56. Section 384 provided that the filed appeal on points (*ревизија*) of law does not adjourn the execution of judgment against which it has been filed.

57. Section 387 provided that parties may present new facts and introduce new evidence in the proceedings only if these concern essential violations of the provisions for civil procedure for which an appeal on points of law is permitted.

58. Section 393 provided that the Supreme Court may dismiss an appeal on points of law as unfounded if it determines that the grounds it must examine *ex officio*, or which were included in the appeal, are ill-founded.

59. Section 395 § 1 provided that when the Supreme Court finds that the substantive provisions of an act are wrongly applied by the lower courts, it shall grant the appeal on points of law (*ревизија*) and deliver a judgment on the merits.

H. The 2001 Law on Ownership and Other Property Rights (*Закон за сопственост и други стварни права*)

60. Section 144 § 3 provides that the lawful acquiring of ownership over a property does not have any bearing on the rights of other persons over that property.

61. Section 148 § 1 provides that the ownership title over real estate obtained by a legal act is acquired by recording that right (act) in the public records for registering real estate rights unless otherwise provided by the law.

62. Section 151 § 1 provides, *inter alia*, that the ownership title over a real estate is acquired by virtue of the recording.

63. Section 151 § 2 provides that the removal of ownership title from the public records, on the ground that the recording was incorrect, may be initiated by an action within three years from the day when the real estate was recorded.

I. The 1986 Law on the Land Registry and Recording of Real Property (*Закон за премеар, катастар и запишување на недвижностите*) as amended in 1991

64. Section 5 provides, *inter alia*, that the Land Registry (*Државен завод за геодетски работи*) is responsible for recording property rights over real estates.

65. Section 50 provides, *inter alia*, that the Land Registry shall record ownership rights over real estates.

THE LAW

I. PRELIMINARY REMARK

66. At the outset, the Court notes that the information that the applicant had already bought the apartment in which he had been living was submitted by the applicant and confirmed with documents by the Government following the admissibility decision of 11 October 2001. It expresses regrets for not being furnished with the foregoing information prior to the conclusion of the admissibility proceedings or within the specified deadlines following these proceedings.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

67. The applicant claimed to be a victim of a breach of Article 1 of Protocol No. 1, which provides 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.”

A. The parties' submissions

1. *The applicant*

68. The applicant complained under Article 1 of Protocol No. 1 that the decisions of the Ministry of Defence and of the Supreme Court deprived him of the right to purchase an apartment with a price adjustment. He maintained that Article 1 of Protocol No. 1 was applicable to the present case. As an army serviceman he had had to allocate 4.5-6% from his salary for the construction of army apartments whereas the civilians had had to allocate only 2-4% for the construction of “socially owned apartments”. In addition, 50% of his monthly rent had been paid to the civil Local Housing Unit (“SIZ”). Therefore, he had had a “legitimate expectation” to purchase the apartment at a reduced price.

69. The applicant submitted that he could not have reasonably foreseen that the Socialist Federal Republic of Yugoslavia (“SFRY”) would fall apart and that he would be deprived of the right to purchase the apartment at a reduced price, unlike other former servicemen who had exercised this right. He submitted that there had been no difference between the apartments which used to be owned by the former Yugoslav Army and the apartments which used to be owned by the Council of Ministers of the Socialist Republic of Macedonia, as they now belonged to a single State Housing Fund owned by the Government of the former Yugoslav Republic of Macedonia. Whether the person in question had been a serviceman or not had been the only ground to entitle a person to purchase an apartment from this single State-owned fund at a reduced price.

70. The applicant stated that according to the rules on conflict of laws the applicable law was the one which had been more beneficial for the party in the proceedings. In his case, there being a conflict between the Z.P.S.O.S.

and the Z.S.O.J.N.A., the latter should have prevailed. The applicant further stated that since there had been a valid law governing his rights in regard of the purchase of the apartment, *i.e.* the Z.S.O.J.N.A., he could not have been deprived of this right on the basis of the Government's regulations.

71. The applicant observed that the Constitutional Law on Implementation of the Constitution had provided for harmonisation of all federal laws with the 1991 Constitution within a year. However, the Z.S.O.J.N.A. had been abrogated not earlier than 1996, after 7,800 apartments had been sold to the army servicemen.

72 Finally, the applicant's most recent submission was that he was being threatened with the enforcement of the Supreme Court's judgment of 18 December 1997 even though he had purchased the apartment.

2. The Government

73. The Government submitted that Article 1 of Protocol No. 1 was not applicable to the present case. It could not be considered that the applicant had had a "legitimate expectation" to purchase an apartment at a reduced price on the ground that he had paid monthly contributions for the construction of the military apartments and for the land planning. These contributions had been paid by all the citizens of former Yugoslavia on the basis of solidarity and most of them had never had the privilege to live in "socially or army-owned apartments" and to purchase them. The prices of goods subject to sale in commercial activities did not come within the scope of Article 1 of Protocol No. 1 of the Convention. The State did not have any obligation, under this Article, to assist a private person to acquire goods at a reduced price.

74. Taking into consideration the fact that the sale of the apartment had involved a contractual relationship between the applicant and the State, and that the only issue to settle in the instant case had been the issue of the price, the Government considered that Article 1 of Protocol No. 1 was not applicable to the facts of the case. At any rate, the applicant had been entitled under the Z.P.S.O.S., a law adopted by the former Yugoslav Republic of Macedonia, to purchase the apartment where he had been living as a tenant.

75. The Government submitted that the former Yugoslav Republic of Macedonia, as an independent State, had been free to accept only those federal laws which were indispensable for the functioning of the State. The Z.S.O.J.N.A., a law of the former federation, had been abrogated by a decision of the Constitutional Court for being incompatible with the 1991 Constitution. The Government regulations issued in connection with the terms for sale of the apartments transferred by the former Yugoslav Army had also been abrogated.

76. In any event, the Z.S.O.J.N.A. had not been applicable in the applicant's case. Although he was a former army serviceman, the

Z.S.O.J.N.A. had not imposed any obligations on the Government to sell to him the apartment at a price reduced by his contributions to the construction of the military apartments and land planning as his apartment had not been owned by the former Yugoslav Army.

77. The Government further submitted that the applicant had freely accepted the exchange of the apartments as he had found a job in Skopje as a civil pilot; thereby he had voluntarily accepted the change in the ownership and the different statutory rules on ownership which resulted.

78. Finally, the Government's most recent submission was that the applicant had already bought the apartment, thus becoming owner of it. They maintained that the "peaceful enjoyment of possessions" within the meaning of Article 1 of Protocol No. 1 did not include the price of goods subject to sale in commercial activities.

B. The Court's assessment

79. The Court observes that the applicant has in fact become owner of the apartment. It does not appear, from the information made available, that the applicant's continued ownership is under threat. The Government's position, reflecting the Supreme Court decision of 16 October 1997, is that he had no right to buy at a reduced price. In essence the case concerns the price applicable to the purchase and, at most, the applicant runs the risk of being required to pay the difference. The Government have submitted that this does not fall within the scope of Article 1 of Protocol No. 1.

80. The Court reiterates that the concept of "possessions" in Article 1 of Protocol No. 1 has an autonomous meaning and that Article 1 of Protocol No. 1 in substance guarantees the right of property (see *Marckx v. Belgium*, judgment of 13 June 1979, Series A no. 31, pp. 27-28, § 63). A "possession" within the meaning of the above provision may be either an "existing possession" or a claim, in respect of which the applicant can argue that he has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see the *Pine Valley Developments v. Ireland* judgment of 29 November 1991, Series A no. 222, p. 23, § 51). The "legitimate expectation" may also encompass the conditions attaching to the acquisition or enjoyment of property rights. For example, in the case of *Pine Valley* (cited above), the Court found that a legitimate expectation arose when outline planning permission had been granted, in reliance on which the applicant companies had purchased land with a view to its development. The planning permission, which was later annulled rendering development of the land impossible, was a "component part of the applicant companies' property". Similarly, where an applicant had leased land for a period of 22 years on payment of an annual ground rent with an option to renew the lease for a further period at the expiry of the term and had erected at his own expense buildings to sub-let for rent, the Court found that he had to be

regarded as having at least a “legitimate expectation” of exercising the option to renew and this had to be regarded, for the purposes of Article 1 of Protocol No. 1 as “attached to the property rights granted to him ... under the lease” (*Stretch v. the United Kingdom*, no. 44277/98, § 35, 24 June 2003).

81. Turning to the present case, the Court recalls that in 1996, following the decisions of the Municipal and Appellate Court in his favour, the applicant purchased from the Government the apartment in which he had been living at a reduced price pursuant to the provisions of the Z.O.S.J.N.A.

82. The Court notes that the Z.O.S.J.N.A. was a federal law that had remained in force in the respondent State until it was abrogated in 1996. It provided for terms of sale of apartments granted for use by the former Yugoslav Army to army servicemen, vesting to the latter the right to purchase these apartments at a beneficial price, from which their monthly contributions to the former army’s housing fund were to be deducted. These beneficial purchase conditions were to be applied to all apartments, irrespective of who formally owned them (the Federal Army or other State bodies), the Army having an obligation to cover the price difference for the apartments that had been owned by other State bodies (see paragraphs 14 and 43-46 above).

83. Later, following the conclusion of the S.P.O.V.P.N.T.R.M., the Macedonian Ministry of Defence appears to have succeeded to all rights and obligations the former Yugoslav Army had had on the territory of the former Yugoslav Republic of Macedonia, including the sale of army apartments to army servicemen under the beneficial conditions of the Z.O.S.J.N.A. (see paragraphs 16 and 47-49 above). Although the S.P.O.V.P.N.T.R.M. and the Governmental Regulation implementing it (U.P.D.S.F.N.J.A.) had not explicitly imposed an obligation to make up the price difference for the apartments that had belonged to State bodies other than the Army (see paragraph 45 above), the Ministry of Defence had not always applied the distinction in practice. Thus, in 1992 the Ministry of Defence exchanged twenty of its apartments for six apartments that had been owned by the State Housing Fund and inhabited by servicemen, thereby making the latter apartments eligible for a sale under the beneficial conditions of the Z.O.S.J.N.A. (see paragraph 17 above). From the latter, the Court deduces that for the six apartments in question the Ministry of Defence agreed to undertake the obligation to pay the price difference for their sale at a reduced price. The Government did not furnish any detail as to the criteria concerning the said exchange of apartments.

84. Furthermore, the Court observes that in 1996 the Constitutional Court abrogated the Z.O.S.J.N.A. and the U.P.D.S.F.N.J.A. without retroactive effect (see paragraph 19 above). Thereby, the Constitutional Court impliedly endorsed all purchases of apartments at beneficial prices that had been completed prior to the issuance of the Constitutional Court’s

decision. The Court notes that the applicant had purchased the apartment in which he had been living at a reduced price before the Constitutional Court's decision was issued. He had concluded his sale contract with the Government on 17 April 1996, and it had been authorised by a court on 15 May 1996, whereas the Constitutional Court's decision was issued on 26 June 1996 (see paragraphs 19 and 28 above).

85. In the circumstances, taking into account the applicant's previous contributions and the agreements in force at the time, the Court considers that the applicant may be regarded as having a "legitimate expectation" that the purchase of his apartment be at a reduced price.

86. Notwithstanding that "legitimate expectation" however, in 1997 the Supreme Court held that the applicant had no right to buy at the reduced price, essentially as it did not consider that the former Yugoslav Republic of Macedonia had succeeded to the obligations of the former Yugoslav Army. While the Court has only a limited power to deal with alleged errors of fact or law committed by national courts, to which it falls in the first place to interpret and apply national law (see, most recently, *Kopecky v. Slovakia* [GC], no. 44912/98, judgment of 28 September 2004, § 56, ECHR 2004-...), it considers that the Supreme Court decision failed, without any explanation, to take into account the pre-existing legal position and practice (see, *mutatis mutandis*, *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

87. As a result of that decision the beneficial condition attaching to the applicant's purchase of his apartment has been, apparently, invalidated and he is liable to a claim to pay further sums of money. This may be regarded as an unjustified interference with his peaceful enjoyment of his possessions and there has therefore been a violation of Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN TOGETHER WITH ARTICLE 1 OF PROTOCOL NO. 1

88. The applicant complained that he had been discriminated against in comparison to some other former army servicemen who had purchased apartments at a reduced price, although they had not been owned by the former Yugoslav Army, invoking Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1.

Article 14 provides:

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

89. Having regard to the finding of a violation concerning the applicant's right to the peaceful enjoyment of his possessions (see paragraphs 79-87 above), the Court does not consider it necessary to

examine the allegation of a breach of Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

90. 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. Damage

91. The applicant claimed a total of 1,426,222 Macedonian denars (MKD) in respect of pecuniary damages. In respect of non-pecuniary damages, he claimed between 70,000 and 150,000 former German Marks (DEM), leaving the Court to determine the exact amount.

92. The Government submitted that the applicant had already purchased the apartment at a reduced price in 1996.

93. Having regard to the exceptional circumstances of the case, in particular the fact that the disputed judgment of the Supreme Court has never been enforced by the Government, the Court considers that the finding of a violation constitutes in itself sufficient compensation for any damage in the present case.

B. Costs and expenses

94. The applicant claimed to have spent EUR 610 for counsel’s fees and expenses, and DEM 1,500 for translation, postage, and other administrative expenses. However, no documentary evidence was submitted in this respect.

95. The Government did not comment.

96. According to the Court’s case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

97. Since the applicant did not furnish any documentary evidence showing that he had incurred any costs and expenses (bills of costs, statements of fees, contract for representation, etc.), the Court does not award any sum in this respect.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
2. *Holds* that it is not necessary to examine whether there has been a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1;
3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any damage sustained by the applicant;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 February 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President