CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 51362/99
by Anka ENEVA and Dobromir DOBREV
against Bulgaria

The European Court of Human Rights (First Section), sitting on 12 May 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr L. LOUCAIDES,
Mrs F. TULKENS,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr D. SPIELMANN, *judges*,
and Mr S. NIELSEN, *Registrar*,

Having regard to the above application lodged on 13 May 1999,

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

The applicants, Mrs Anka Ivanova Eneva and Mr Dobromir Enchev Dobrev, are Bulgarian nationals, who were born in 1932 and 1953 respectively and live in Varna. Before the Court they were represented by Mrs S. Margaritova-Voutchkova, a legal adviser practising in Sofia. The respondent Government were represented by their agent, Mrs M. Dimova, of the Ministry of Justice.

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

A. The particular circumstances of the applicant's case

By virtue of section 7 of the Restitution Law, in judicial decisions of 1996 and 1998 the courts found that the applicants had not validly obtained ownership in the apartment they had purchased in 1964. Ownership thereof was bestowed back to the heirs of the persons from whom the apartment had been nationalised in 1949.

The property at issue in the present case, a two-room apartment of about 75 square metres, was nationalised in 1949 without adequate compensation. Between 1949 and 1959 the local municipal housing fund rented the apartment to several different tenants. In 1961 Ms G., who had been living in the apartment since 1959, purchased it from the local municipality. In 1964 Ms G., having obtained the necessary authorisation, sold the apartment to the applicants' family.

In 1992 the pre-nationalisation owners brought an action under section 7 of the Restitution Law against the applicants and against Ms G. They also sought a *rei vindicatio* order.

In 1994 the competent District Court dismissed the claim. On appeal its judgment was quashed on 9 January 1996 by the Regional Court which proceeded with an examination on the merits and, by judgment of 24 June 1996, granted the claim.

The Regional Court noted that no trace of a tenancy agreement of 1959 between the municipality and Ms G. had been found in the archives. It found that, therefore, Ms G. had not been a tenant in the apartment at issue and that she had not been entitled to buy it. Furthermore, the 1961 sale-purchase contract between Ms G. and the municipality had not been signed by the mayor personally. It followed that Ms G.'s title had been void and that the applicants - who had purchased the apartment from her in 1964 - had not become owners either. The applicants were ordered to vacate the apartment.

On 3 December 1998 the Regional Court's judgment was upheld by the Supreme Court of Cassation. The applicants' objection that they had been in good faith and had acquired the apartment through adverse possession was dismissed as the law excluded acquisitive prescription in respect of State property.

On an unspecified date the applicants vacated the apartment.

On an unspecified date the applicants obtained an unspecified amount of compensation bonds.

In October and November 2002 the applicants requested the municipal and regional authorities in Varna to sell them an apartment against compensation bonds. The regional governor refused by letter of 7 October 2002. The municipality of Varna, by letter of 16 December 2002, informed the applicants that they could only buy a municipal apartment if they were tenants in such an apartment. Furthermore, in accordance with the relevant municipal regulations, not more than 25 % of the apartment's price could be paid in compensation bonds. The remainder had to be paid in cash.

B. Background facts and relevant domestic law and practice

These are summarised in application no. 43278/98, Velikov and Others v. Bulgaria.

COMPLAINTS

The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had been deprived of their property acquired *bona fidae* and could not receive full compensation. They maintained that through section 7 of the Restitution Law the authorities had acted in a manner similar to that used by the communist authorities in 1949: they had deprived of their property individuals chosen on a random basis and had offered in exchange token compensation in the form of bonds without real value.

The applicants complained under Article 6 of the Convention of the alleged unfairness of the judicial proceedings. In particular, the courts had overturned the burden of proof, requiring the defendants to prove that there had been a tenancy contract between the municipality and Ms G. Furthermore, the courts had refused to hear witnesses on that question, stating that only documentary evidence was admissible.

THE LAW

1. The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had been the victims of an arbitrary deprivation of property without adequate compensation. Article 1 of Protocol No. 1 provides:

> "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's submissions

The Government stated that the legislation on the restitution of nationalised property pursued important legitimate aims in the public interest: providing justice and moral satisfaction for all those whose property had been nationalised without compensation in the past and launching the foundations of a modern social and economic system, based on democracy and a market economy. In choosing the means to achieve those aims, the national authorities enjoyed a wide margin of appreciation in accordance with Article 1 of Protocol No. 1 to the Convention.

The Government maintained that the restitution laws were sufficiently clear. They provided for judicial examination of disputes between pre-nationalisation owners and those who had purchased the nationalised property from the State. The applicants' case had been dealt with by three levels of jurisdiction. Thus, the conclusion that they had bought the apartment in breach of the law had been reached on the basis of the examination of all pertinent evidence in accordance with the applicable rules of evidence.

Citing the Constitutional Court (judgment No. 1 of 18 January 1996 in case no. 29/1995), the Government emphasised that nullity was an adequate sanction in respect of transactions concluded in breach of the law. Any other solution would run contrary to the principles of legal certainty and the rule of law.

The Government also considered that the relevant law and practice had not imposed on the applicants an excessive burden and had not violated the principle of proportionality.

In particular, in the Government's view, persons ordered to vacate their apartments under section 7 of the Restitution Law had the possibility to rent a municipal apartment at low rates or to obtain a rent allowance, if they had

insufficient means to pay market rental prices. For a certain period of time there had also been a possibility to obtain compensation in cash at market prices. Since 2000, compensation by bonds was available. State policy priorities and the availability of State resources during the relevant period had necessitated resort to several different compensation methods and the corresponding legislative amendments.

As regards the compensation bonds, the Government stated that they could be traded in accordance with the relevant stock exchange rules. Furthermore, the law provided that persons in the applicants' position had priority in purchasing State and municipal dwellings.

The Government also referred to the fact that in accordance with the relevant law and practice the pre-nationalisation owners could not claim compensation for damage or changes in the property since the nationalisation in the 1940s and the post-nationalisation owners could not claim compensation for improvements. In the Government's view, this solution demonstrated that a just balance had been struck between all interests involved.

In sum, the Government considered that the restitution legislation was based on the principles of the rule of law, justice and equality before the law. It struck a balance between the interests of those whose property had been confiscated without compensation in the past and the persons who had lost cases brought against them under section 7 of the Restitution Law. Therefore, as the former Commission found in the case of *Panikian v. Bulgaria* (cited above), the national authorities had not acted beyond their margin of appreciation.

On that basis the Government invited the Court to reject the application as being manifestly ill-founded.

The applicants' submissions in reply

The applicants criticised the Government's observations as being of a general nature, without an analysis *in concreto* of the legal and practical issues in their case. The applicants stated that they did not wish to call into question the entire restitution process in Bulgaria since 1989 but complained of concrete deprivations of property.

The applicants submitted that they had enjoyed several decades of undisturbed possession, paid property tax and maintained and improved an apartment which they had bought from a private individual. The validity of that transaction had never been called into question. They had never had any reason to doubt the seller's title to the property. However, in order to correct an injustice committed in the past, in 1992 and the following years the State had committed another injustice. That injustice was particularly flagrant in the applicants' case as they were deprived of their property as a result of alleged omissions in a transaction between third parties.

The applicants submitted that while the restitution of State owned property had been in the public interest and thus pursued a legitimate aim, the same could not be said of section 7 of the Restitution Law, which sought to satisfy the restitution claims of certain individuals by depriving other individuals of their property.

The applicants further maintained that the deprivation of property they had suffered had not been "prescribed by law" as the applicable law opened the door to arbitrariness. According to the applicants, the initial idea underlying section 7 of the Restitution Law had been to sanction those who had obtained property by abusing their position of power during the communist past. However, the open-ended language of section 7 and its interpretation by the courts had resulted in depriving individuals of their property for nothing more than a trivial administrative omission on the part of municipal clerks.

In particular, by allowing the nullification of titles to property for any breach of the law, without distinction between material breaches and trivial ones, section 7 had set the scene for heated judicial battles over details in transactions dating from decades ago. In the applicants' view, the large majority of real estate transactions effected in Bulgaria in the recent past involved omissions of some nature. Instead of taking into account the practice of the municipalities at the relevant time, the open-ended language of section 7 and its judicial interpretation had led to a situation where any transaction dating from the recent past might at any time be nullified. In the applicants' view section 7 and the judicial practice applying it did not meet the Convention requirements of clarity and foreseeability of the law. Moreover, the impugned law and practice ran contrary to a number of essential legal principles embedded in Bulgarian law such as the prohibition against retrospective application of the law and the provisions on acquisitive prescription for undisturbed possession in good faith.

As to the proportionality of the interference with their property rights the applicants stated that there was a clear imbalance in that they were only entitled to partial compensation. Initially the law did not provide for any possibility for compensation. Although in 1996 the law was amended and provided for full compensation in cash, the Government never paid it and in 2000 Parliament abolished the relevant provisions for the sole reason that the State did not have sufficient resources to pay. The applicants stressed that that constituted a retroactive deprivation of possessions, as they had already acquired pecuniary claims to full compensation in cash.

The applicants further stated that compensation by bonds was inadequate and clearly insufficient in view of the time-consuming procedure and the fact that the amount that could be obtained did not exceed 15 – 20 % of the value of the apartment. Moreover, the applicants were not entitled to compensation for the improvements they had made in the property and owed damages for having used their own apartment after 1992.

The applicants also alleged that the relevant law and practice violated the principle of equality as they favoured the pre-nationalisation owners and were not based on a considered attempt to strike a fair balance. In particular, the Constitutional Court never took into account the burden placed on the post-nationalisation owners and applied a formalistic approach.

The applicants stated, in sum, that after 1992 without any fault on their part they saw themselves implicated in lengthy judicial battles to preserve their own apartment and eventually lost it owing to an unclear and unjust restitution law and decades-old administrative omissions on the part of municipal officials. After further proceedings they could only obtain in compensation a portion of the value of their property, without compensation for the improvements they had made or for the moral suffering they had endured in the process.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicants also complained of the alleged unfairness of the proceedings and relied on Article 6 § 1, which provides, in so far as relevant:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal..."

The Government stated that the courts had acted in accordance with the relevant rules of evidence. The fact that they had refused to hear several witnesses had not affected the fairness of the proceedings as the courts had found it established that there had been another separate ground for nullity of the impugned transaction.

The applicants stated that the courts had overturned the burden of proof, requiring the defendants to prove that there had been a tenancy contract between the municipality and Ms G. Furthermore, the courts had refused to hear witnesses on that question, stating that only documentary evidence was admissible. In reality, what was missing was not a tenancy agreement, but the relevant archives altogether.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President