CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44626/98
by Onnick Arshavir KURKCHIAN and Nuritza KURKCHIAN
against Bulgaria

The European Court of Human Rights (First Section), sitting on 7 March 2002 as a Chamber composed of

Mr C.L. ROZAKIS, *President*,
Mr G. BONELLO,
Mr P. LORENZEN,
Mrs N. VAJIĆ,
Mrs S. BOTOUCHAROVA,
Mr V. ZAGREBELSKY,
Mrs E. STEINER, *judges*,

and Mr E. FRIBERGH, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 9 July 1998 and registered on 20 November 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having deliberated, decides as follows:

THE FACTS

The applicants Onnik Kurkchian and Nuritza Kurkchian are Bulgarian nationals, born in 1937 and 1947 respectively, living in Plovdiv. They are represented before the Court by Mr Kiril Petrov, a lawyer practising in Sofia, Bulgaria.

A. The circumstances of the case

The facts of the case, as submitted by the applicants, may be summarised as follows:

In May 1992 an unlicensed construction on the boundary of the applicants' estate commenced. It was presented as a reconstruction of an existing house in the neighbouring estate but in fact the old building was pulled down and replaced by a higher and a larger structure.

1. Proceeding, concerning the legality of the reconstruction under the Law on the Building Planning (Закон за териториално и селищно устройство)

In May and June 1992 the applicants lodged complaints with the mayor of the municipality and with the chief architect. They alleged that their consent had not been obtained and that the plan of the new building did not meet the relevant legal requirements.

On an unspecified date the municipal authorities suspended the construction. Some modifications were made in the building plan and were communicated to the applicants.

On 7 September 1992 the applicants submitted objections against their neighbours' request for approval of their reconstruction project.

On 19 January 1993 the Council of the Municipality (Общински Съвет) dismissed the applicants' objections.

By decision of 18 March 1993 the reconstruction project was legalised, thus removing any legal obstacle to the resumption of the constructive works (but only until 10 May 1993: see below about the injunction of 10 May 1993).

On 14 June 1993 the applicants appealed against the 18 March 1993 legalisation order before the Plovdiv Regional Court (Пловдивски Окръжен Съд) stating that it had been unlawful.

On an unspecified date in 1994 the Plovdiv Regional Court admitted the report of an expert who had been assigned the task of establishing whether the applicants had signed certain documents concerning the construction. On 11 April 1994, 30 May 1994, 30 June 1994 and 25 January 1995 the Plovdiv Regional Court heard technical experts who submitted reports on the conformity of the reconstruction with the relevant technical rules.

The final hearing was held on 25 January 1995.

By judgement of 30 June 1995 the Plovdiv Regional Court dismissed the applicants' appeal.

In August 1995 the applicants lodged a petition for review (cassation) with the Supreme Court (Върховен Съд).

In 1997, following a restructuring of the judicial system in Bulgaria, all administrative cases under the jurisdiction of the Supreme Court were transmitted to the newly established Supreme Administrative Court (Върховен Административен Съд), under certain conditions.

On 12 January 1998 the Supreme Administrative Court held a hearing in the applicants' case. By judgement of 30 March 1998 the judgement of the Plovdiv Regional Court was quashed and the 18 March 1993 legalisation order was declared null and void as it had not been signed by the competent officer.

As of March 1998 the construction in the neighbouring estate was already completed and allegedly prevented the access of sunlight to the applicants' house.

2. Proceedings under the Law on Property (Закон за собствеността)

On 28 April 1993 the applicants instituted before the Plovdiv District Court (Пловдивски Районен Съд) civil proceedings against their neighbours stating that their right to property had been infringed. They noted that the construction in the neighbouring estate entered their land and impeded the normal use of their house as it reduced sunlight access and required permanent resort to electrical lighting. Therefore the applicants demanded that the defendants be ordered to remove the construction and to restore the previous situation.

They also requested an injunction suspending the construction works. On 10 May 1993 the Plovdiv District Court granted the injunction request. The defendants lodged an appeal, which was apparently dismissed. Despite the suspension order the construction allegedly continued.

On 11 October 1993 the Plovdiv District Court suspended the examination of the case pending the outcome of the proceedings on the applicants' appeal against the 18 March 1993 legalisation order (see above). In 1998, after their finalisation, the proceedings between the applicants and their neighbours resumed. On 13 January 1999 they were allegedly again suspended as a new procedure for legalisation had commenced. There is no

information whether the applicants have appealed against the 1993 and the 1999 suspension of the proceedings.

As of January 1999 the civil proceedings between the applicants and their neighbours were still pending before a first-instance court.

COMPLAINTS

1. The applicants complain under Article 6 § 1 of the Convention that the two sets of proceedings concerning the construction works in their neighbours' estate lasted unreasonably long.

2. The applicants complain under Article 6 § 1 of the Convention that their right to a fair trial was infringed in the course of the first proceedings as in 1995 the Plovdiv Regional Court dismissed their appeal against the legalisation order without examining all the evidence.

3. The applicants complain under Article 1 of Protocol No. 1 of the Convention that the construction in the neighbouring estate prevents the access of sunlight to their house, thus impeding its normal use, and that they cannot freely enjoy their possessions.

THE LAW

1. The applicants complain under Article 6 § 1 of the Convention of the length of the two sets of proceedings and under Article 1 of Protocol No. 1 of the Convention that they cannot freely enjoy their possessions.

The Court considers that it cannot, on the basis of the file, determine the admissibility of the above complaints and that it is therefore necessary, in accordance with Rule 54 § 3 (b) of the Rules of the Court, to give notice thereof to the respondent Government.

2. The applicants complain under Article 6 § 1 of the Convention that the first proceedings were not fair, as in 1995 the Regional Court did not take into consideration all the evidence.

In the light of all the material in its possession, and in so far as this complaint falls within its competence, the Court finds that this complaint does not disclose any appearance of a violation of the Convention. It follows that this part of the application must be rejected, in accordance with Article 35 § 3 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints under Article 6 § 1 of the Convention about the length of the two sets of proceedings concerning the construction works in their neighbours' estate and under Article 1 of Protocol No. 1 of the Convention as regards the alleged infringement of their right to peaceful enjoyment of their house;

Declares inadmissible the remainder of the application.

Erik FRIBERGH
Registrar

Christos ROZAKIS
President