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. 50954/99
by Kiril MASLENKOV AND OTHERS
against Bulgaria

The European Court of Human Rights (First Section), sitting on 31 March 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*

and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 27 July 1999,

Having regard to the observations submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants are Mr Kiril Zahariev Maslenkov (“the first applicant”), born in 1926, Ms Elena Nikolova Maslenkova (“the second applicant”), born in 1927, Mr Zahari Kirilov Maslenkov (“the third applicant”), born in 1949 and Ms Elena Krumova Maslenkova (“the fourth applicant”), born in 1951. They are all Bulgarian nationals and live in Sofia. The first two applicants are the parents of the third applicant. The fourth applicant is the third applicant's wife. The applicants were represented before the Court by Mrs N. Sedefova, a lawyer practising in Sofia.

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

At the relevant time the first applicant was Chief of Staff of the Ministry of the Interior. He owned an apartment together with his wife until 1980, when they donated it to their son. Thereafter, the first two applicants lived as tenants in a State-owned apartment.

On 27 November 1985, the first applicant was granted the tenancy of another State owned apartment which belonged to the housing fund of the Ministry of the Interior. The tenancy order was signed by the Chief of the Auxiliary Services Department. It was issued upon the applicant's request, which had been approved by the Minister of the Interior.

On 18 December 1985 the Ministry gave its consent to the sale of the apartment to the first and the second applicants. As the apartment's surface was larger than 120 square metres, the consent of the local municipality was also necessary. It was given in writing on 25 December 1985, without reasoning. On 15 January 1986 a sale-purchase contract was signed, which concluded the transaction. The applicants' family paid the purchase price, 31,891 old Bulgarian levs (“BGL”) in instalments.

For purposes of the 1985/86 transaction, the first applicant had submitted declarations stating that he lived with his wife, their grand-daughter and the second applicant's mother.

On 27 January 1992 the first and second applicants transferred the apartment to the family of their son (to the third and fourth applicants). The transaction was effected as a sale, the price being BGL 7,840.

On 3 June 1992 the Ministry of the Interior brought a *rei vindcatio* action against the applicants claiming that the 1985/86 transaction had been null and void as being contrary to the relevant provisions on the sale of housing, as in force at the time.

On 7 October 1992 the Sofia District Court held its first hearing in the case. As the initial action had only been brought against the first and the second applicants, the court, noting that the apartment had been transferred to the third and the fourth applicants, suspended the proceedings and instructed the plaintiff, the Ministry of the Interior, to indicate their address and to submit copies of the claim to be served on them.

The Ministry did not comply until April 1993, which caused the adjournment of the hearings listed for 2 December 1992 and 4 March 1993.

The examination of the case thus began on 7 July 1993. Although the fourth applicant had not been validly summoned, her lawyer gave his consent for the hearing to proceed.

The hearing listed for 3 November 1993 was adjourned as the Ministry of Finance, whose participation was mandatory in such cases, had not been summoned.

At the hearing held on 2 February 1994 the Ministry of the Interior requested an adjournment to enable them to submit documents pertaining to the 1985/86 sale.

The hearing resumed on 14 April 1994. The plaintiff introduced an amendment to the claim and sought an order requiring the first two applicants to appear personally and answer to questions regarding their housing situation at the time they had obtained the disputed apartment. The court issued that order and adjourned the hearing.

On 1 June 1994 the first applicant could not be heard as he had been taken ill. On 8 July 1994 he was eventually heard by another judge in the town where he underwent medical treatment.

The Sofia District Court resumed the examination of the case on 20 September 1994, when the parties made their final submissions. The court reserved judgment.

By judgment of 4 November 1995 the District Court found that the 1986 sale-purchase transaction had been null and void, that as a result the first and the second applicants had never become owners and that, therefore, the third and the fourth applicants had not become owners either. As a result, the court granted the Ministry's *rei vindicatio* claim.

The court reached the conclusion that the 1986 transaction had been void on the following basis.

(i) Under the relevant law as in force at the time tenancy orders for Ministry of the Interior apartments could be issued either by the Minister or by the Deputy Chief of the Auxiliary Services Department. In the applicant's case, the 1985 tenancy order had been issued upon the applicant's request, approved by the Minister, but was signed by the Chief of the Auxiliary Services Department, not by his deputy, who had been the competent official. The court considered, relying on the Supreme Court's case-law, that as a result the 1985 tenancy had been null and void. Since only tenants of State-owned apartments had the right to buy them, the 1986 sale-purchase contract had also been null and void;

(ii) In addition, the court found a second ground for nullity. It noted that in accordance with the law as in force at the time, individuals could rent or purchase dwellings on the basis of their housing need. The relevant rules provided that the term “family” could only include the spouses, their minor children and the spouses' parents, where they lived together. At the relevant

time, however, the children of the first and the second applicants had reached the age of majority. Their grand-daughter could not be considered as a member of their family. Also, it was unclear whether the second applicant's mother had actually lived with them. In these circumstances the family had had two members and had only been entitled to one room. For a larger apartment, a reasoned authorisation had been necessary. There had been no such authorisation in the case at hand.

On 30 November 1995 the applicants appealed to the Sofia City Court. On 15 February, 18 April, 10 June, 14 October and 5 December 1996 the hearing could not proceed as the Ministry of the Interior had not been properly summoned. That was due to the fact that the summons' receipts had not been filled out properly.

The appeal was eventually heard on 27 February 1997.

By judgment of 19 June 1997 the Sofia City Court quashed the lower court's judgment and dismissed the claims of the Ministry of the Interior, based on the following findings.

(i) The court found that the body that had issued the 1985 tenancy order had been the Auxiliary Services Department, as required by law. The fact that the person acting on behalf of the competent body had been its Chief and not its Deputy Chief could possibly be a ground for a challenge within a short time-limit - which in the applicants' case had expired years before the *rei-vindicatio* claim had been brought - but could not render the tenancy order null and void *ab initio*.

(ii) As regards the second ground for nullity, while accepting that the first and the second applicants had obtained an apartment exceeding their housing need and thus in violation of the relevant regulations, the Sofia City Court found that such an irregularity could only serve as a ground for seeking the administrative order's cancellation, within a short time-limit, and did not entail its nullity *ab initio*.

The Sofia City Court also found that in 1992 the third and the fourth applicants had validly obtained ownership of the disputed apartment.

On 8 August 1997 the Ministry of the Interior submitted a petition for review (cassation) to the Supreme Court, which later became the Supreme Court of Cassation.

A hearing was held on 18 November 1998.

On 2 February 1999 the Supreme Court of Cassation quashed the Sofia City Court's judgment and upheld the Sofia District Court's judgment thus granting the *rei vindicatio* claim. The reasons were as follows.

(i) The relevant law as in force in 1985 expressly referred to the Deputy Chief of the Auxiliary Services Department of the Ministry of the Interior as the official competent to issue tenancy orders in respect of dwellings belonging to that ministry. The power to issue such orders was not vested in the Department as a whole but in its Deputy Chief. Therefore, the District Court had correctly considered that the first applicant's tenancy order had

been null and void and that, consequently, the sale-purchase contract that had followed had also been null and void.

(ii) The provisions regulating the size of apartments on the basis of housing need, as in force at the relevant time, established strict rules in whose application no discretion was permissible. Therefore, a violation of those rules entailed nullity *ab initio*. The tenancy order and the sale of the apartment had therefore been null and void.

The Supreme Court of Cassation further found that the third and the fourth applicants had not become owners in 1992 as they had purchased the apartment from persons who were not its owners.

In accordance with section 34 of the Law on Obligations and Contracts, each party to a void contract can recover from the other party the sums paid or the property transferred under the contract. The applicants have not sought the price they had paid for the apartment since, owing to the inflation and the devaluation of the Bulgarian currency, they are bound to receive an amount tens of times lower than the value of the apartment.

COMPLAINTS

The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had been deprived of their apartment pursuant to legal provisions which had lacked sufficient clarity and had been applied selectively and arbitrarily.

They stated, *inter alia*, that the distinction between nullity *ab initio* and annulment *ex nunc* of administrative decisions was vague and its interpretation in practice changing. Furthermore, the applicants considered that they had not been responsible for the administrative omissions that had led to the annulment of the 1985/86 transaction. In their submission, it was well known that omissions on the part of State organs had been involved in numerous real estate transactions from the recent past. Nevertheless, only selected cases had been pursued, which amounted to arbitrariness. The applicants considered that the provisions of Bulgarian law according to which State property could not be acquired by prescription, combined with the broad interpretation of the concept of nullity *ab initio* applied by the courts in their case, had made it possible for the State to recover arbitrarily property sold to individuals at any time and in any case.

The applicants also complained under Article 6 § 1 of the Convention of the length of the proceedings in their case.

THE LAW

The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had been deprived of their apartment and under Article 6 § 1 of the Convention of the length of the civil proceedings in their case.

The Court notes that the time-limit for the submission of the Government's observations was twice extended upon their request and expired on 2 July 2004. However, the Government did not submit any observations within that time-limit.

The Court considers, in the light of the material in the case, that the complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that the application 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