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. 194/02
by Dimitar and Zvezda NIKOLOVI
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 29 September 2001,

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, Mr Dimitar Georgiev Nikolov and Zvezda Dimitrova Nikolova, are Bulgarian nationals, who were born in 1934 and 1960 respectively and live in Russe. 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 applicants' case

By virtue of section 7 of the Restitution Law and through judicial decisions the applicants' title to their apartment (which the first applicant and his late wife had purchased from the local municipality in 1970) was declared null and void. Ownership thereof was bestowed back to the heir of the persons from whom the apartment had been nationalised in 1949.

In 1970 the first applicant and his wife bought a three-room 96 square metres apartment from the local municipality.

In 1992 the pre-nationalisation owner brought an action against the applicants under section 7 of the Restitution Law.

The courts granted the claim, noting that two of the relevant documents had been signed by the deputy mayor and not by the mayor and that there had been other irregularities. The final decision was handed down on 24 June 1998.

On 27 October 1998 the applicants were evicted.

In 1998 the applicants requested compensation by bonds. On 29 April 1999 the regional governor, after having commissioned an expert to assess the value of the apartment, ordered compensation by bonds with face value 47,800 Bulgarian levs (“BGN”) (the equivalent of approximately EUR 24,000).

On 31 March 1999 the applicants were granted the tenancy of a municipal apartment. They applied to purchase it by bonds.

In March 2000 the municipal council in Russe decided that applications by persons who had lost cases under section 7 of the Restitution Law and wished to purchase an apartment should be granted.

On 3 May 2000 the mayor of Russe wrote to the Ministry of Finance inquiring whether the municipality would be able to use compensation bonds obtained through the sale of apartments for bonds. On 26 July 2000 the Ministry replied that once used for the purchase of a municipal apartment the bonds are “cancelled”.

On 19 January 2001 the mayor wrote to the applicants stating that the municipality was not under an obligation to sell an apartment to them.

On 8 February 2001 the applicants brought an action against the mayor challenging his refusal to sell an apartment. The Russe Regional Court rejected the claim as inadmissible, stating that the mayor's refusal to sell an apartment was not an administrative decision and, therefore, was not amenable to judicial review. The applicants appealed to the Supreme Administrative Court.

On 17 April 2001 the Supreme Administrative Court upheld the rejection of the claim. The court noted that in accordance with the provisions of the Compensation Law and the Municipal Property Law, compensation bonds could be used for the purchase of municipal dwellings. Also, persons who had lost cases under section 7 had priority when applying to purchase the apartment they were renting. Nonetheless, the sale of an apartment being a civil transaction to which the parties are at an equal footing, the mayor's refusal was nothing more than a refusal to enter into a transaction, not an administrative decision. Therefore, the mayor's refusal did not affect any right of the applicants. It followed that the refusal was not amenable to judicial review.

On 29 March 2002 the mayor of Russe refused the applicants' renewed request to sell them an apartment for bonds. He explained that the legal provision referring to such a possibility did not impose an obligation for the municipality to sell apartments.

In 2001 the applicants brought an action against the State and the local municipality, seeking damages for the fact that they had been deprived of their apartment owing to an administrative omission imputable to municipal clerks.

On 7 June 2002 the applicants' claims were dismissed by the Russe District Court. The court found that the alleged omissions had occurred in the context of a civil transaction between the municipality and the first applicant and his wife. However, under the State Responsibility For Damage Act, State organs were only liable for damage occasioned by acts and decisions issued in the exercise of State power.

The applicants appealed. As of September 2003 the proceedings were still pending.

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, relying on Article 1 of Protocol No. 1 to the Convention and Articles 13 and 14, that they had been the victims of an unlawful, unjust and immoral deprivation of property without compensation.

The applicants also complained under Article 6 of the Convention that they had been denied access to a court for the determination of their right to buy an apartment.

THE LAW

1. The applicants complained, relying on Article 1 of Protocol No. 1 to the Convention and Articles 13 and 14, that they had been the victims of an arbitrary deprivation of property without adequate compensation.

The relevant provisions of the Convention read:

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."

Article 13

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

Article 14

"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."

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 the State. They had never had any reason to doubt the lawfulness of the transaction and had been owners in good faith. However, in order to correct an injustice committed in the past, in 1992 and the following years the State had committed another injustice.

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 stated that they were unable to obtain damages from the State or the local municipality despite the fact that their title had been declared null and void owing to omissions imputable to municipal officials.

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 under Article 6 of the Convention that they had been denied access to a court for the determination of their right to buy an apartment.

The relevant part of Article 6 § 1 of the Convention reads:

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

The Government stated that the applicants had not appealed against a legal act of the municipality but against its refusal to enter into a transaction. The municipality had been free to decide whether or not they wished to sell an apartment to the applicants. That was not a question to be decided by the courts.

The applicants replied that the mayor had been under an obligation to sell an apartment, pursuant to the municipal council's decision of March 2000 to sell apartments to persons who had lost cases under section 7 of the Restitution Law.

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