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. 74787/01
by Plamen Vasilev PARVANOV and Others
against Bulgaria

The European Court of Human Rights (First Section), sitting on 5 January 2006 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 18 June 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Plamen Vasilev Parvanov, Mrs Blaginka Stamenova Purvanova and Mrs Diana Koleva Koleva are Bulgarian nationals. Mr P. Parvanov (the "first applicant") and Mrs D. Koleva (the "third applicant") were born in 1963 and 1962, respectively, and live in Sofia. Mrs B. Purvanova (the "second applicant") lives in the village of Burlozhnitsa. It is unclear when she was born.

A. The circumstances of the case

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

The applicants' ancestors were Mr. Purvan Vasilev Parvanov ("ancestor A"), Mr. Vasil Purvanov Purvanov ("ancestor B") and Mrs. Tsvetanka Purvanova Koleva ("ancestor C"), the first being the father of the latter two. Subsequently, Ancestor A was succeeded by the first applicant, ancestor B by the first and second applicants and ancestor C by the third applicant.

1. Expropriation of the property of the applicants' ancestors

The applicants' ancestors jointly owned a house with a yard in Sofia with a total surface area of 581.20 sq.m. (the "Property").

By a mayor's order of 8 April 1987 (Заповед № РД-40-594), based on Article 98 of the Territorial and Urban Planning Act (the "TUPA" : "Закон за териториалното и селищно устройство") (see Relevant domestic law and practice below), the Property was expropriated "for embassy needs", but with two separate public works' projects indicted. In particular, (a) the construction of a block of flats and shops, for which 448.20 sq.m. of the Property were expropriated ("Project A") and (b) for embassy needs, for which 133 sq.m. of the Property were expropriated ("Project B").

In determining the compensation due for the expropriation, the value of the Property was assessed at 25,118.06 Old Bulgarian Levs ("BGL"), of which BGL 22,630.81 were specified as being due as compensation for Project A and BGL 2,487.25 for Project B. The compensation thus determined was never paid directly to the applicants' ancestors, but was directly credited against the value of the apartments that were offered to them (see below).

The mayor's order also provided that for the expropriation of the Property "for embassy needs" each of the applicants' ancestors would be compensated with an apartment, situated in a block of flats to be constructed by the Bureau for Servicing the Diplomatic Corps (the "BODK").

On an unspecified date in 1987 ancestor A passed away and was succeeded by the first applicant.

On 29 March 1988 ancestor C transferred her right to receive an apartment as compensation to the third applicant.

By supplementary orders of 15 April 1988, based on Article 100 of the TUPA (see Relevant domestic law and practice below), the mayor individualised the apartments which the applicants or their ancestors would receive – the precise building in which the apartments would be located, the floor on which they would be situated, the apartments' numbers, surface area and value. In particular, the said supplementary orders specified that ancestor A, succeeded by the first applicant, would receive an apartment valued at BGL 15,784 (Заповед РД 41-456/15.04.1988 г.); ancestor B – an apartment valued at BGL 22,113 (Заповед РД 41-455/15.04.1988 г.); and, ancestor C, replaced by the third applicant – an apartment valued at BGL 21,258 (Заповед РД 41-457/15.04.1988 г.).

The value of the expropriated Property (BGL 25,118.06) was directly credited against the value of the apartments offered as compensation (BGL 59,155) and the applicants or their ancestors were required to pay the difference. On unspecified dates, the applicants or their ancestors paid that difference (BGL 34,036.94) to the State.

By orders of 4 and 27 April 1988 ancestor B and the first applicant were provided temporary housing in two flats owned by the BODK. Lease agreements were thereafter also executed which provided for the use of the flats by the lessees until completion of the apartments due as compensation.

The construction of the block of flats in which the apartments offered as compensation were to be located was never commenced.

2. Restitution of the Property

In February 1992 the Restitution of Some Expropriated Property Act (the "RSEPA") entered into force (see Relevant domestic law and practice below).

On 13 April 1992 the applicants and their ancestors petitioned the Sofia mayor to restitute the entire Property because neither of the public works' projects had commenced and the expropriated house was still standing.

No response was received from the Sofia mayor, so on an unspecified date the applicants and their ancestors appealed against the tacit refusal to rule on their request.

On an unspecified date, the area of the Property designated for Project B was increased by 120 sq.m., valued at BGL 840, to 253 sq.m. An equivalent reduction was thereby made to the area designated for Project A to 328.20 sq.m.

The expropriated house was pulled down on an unspecified date and BODK commenced the construction of one of the public works' projects – Project B, a Polish embassy complex.

Upon a request from the applicants, on 22 May 1992 the Sofia District Court issued a temporary injunction against the Sofia Municipality and the

BODK to stop all construction works in the Property. The order was served on 21 August 1992, but the construction works continued unabated, as evidenced by a protocol of inspection of 28 August 1992.

Subsequently, by decision of 11 December 1992 (Отказ № РД-54-110/11.12.1992 г.) the Sofia mayor formally refused to restitute the Property, because the expropriated house had been demolished and the construction of a Polish embassy complex had commenced.

By judgment of 7 October 1994 the Sofia City Court found partly in favour of the applicants and their ancestors. It noted that the Property had been expropriated for two distinct public works' projects – Project A and Project B. The court also found that, insofar as the construction of a Polish embassy complex had commenced, it was not possible to restitute that part of the Property which was designated for Project B, namely 253 sq.m. of the site (the "un-restituted Property"). However, the court found that Project A had not commenced and restituted the remaining part of the Property, amounting to 328.20 sq.m. (the "restituted Property").

The court further noted that under the original expropriation and compensation orders (see part A.1. above) the applicants and their ancestors had been provided with apartments as compensation only in respect of the un-restituted Property. It concluded, therefore, that in respect of the restituted Property they should be considered to have received monetary compensation. Accordingly, the court provided that restitution would be affected upon reimbursement, in cash, of a proportionate part of the compensation received in respect of the restituted Property. Based on the original expropriation and compensation orders the court calculated that amount to be BGL 22,697.81.

The Sofia Mayor did not appeal against this judgment and it entered into force on an unspecified date.

Relying apparently on the aforementioned judgment and the preservation of their rights to receive three apartments for the un-restituted Property, on an unspecified date the applicants and their ancestors reimbursed BGL 22,697.81 to the State in order to effect the restitution of the restituted Property.

It is unclear when the applicants or their ancestors were transferred possession of the restituted Property.

In 1996 the Sofia Municipality petitioned the Sofia City Court to interpret its judgment of 7 October 1994 in respect of whether it still owed to the applicants and their ancestors three apartments as compensation for the un-restituted Property.

By judgment of 27 January 1997 the court refused to provide an interpretation of its judgment because it considered it to be quite clear in respect of the action brought before it – the claimants' right to restitution of the Property. The court considered that it was not obliged to provide a clarification on whether the State continued to owe three apartments as

compensation to the applicants and their ancestors in respect of the un-restituted Property.

On 15 October 1997 ancestor B passed away and was succeeded by the first and second applicants.

3. Subsequent events

(a) The applicants' right to receive three apartments as compensation in respect of the un-restituted Property

By letter of 2 December 1997 the BODK informed the applicants that by virtue of the judgment of 7 October 1994 of the Sofia City Court the apartments offered as compensation for the expropriation of the Property were no longer due.

By order of 16 July 1998 (№ РД-41-35/16.07.1998 г.) the Sofia Municipality revoked the three orders of 15 April 1988 (see part A.1. above), which individualised the apartments with which each of the applicants would be compensated. The applicants appealed against the order on an unspecified date.

By judgment of 21 November 1999 the Sofia City Court dismissed the applicants' appeal. The applicants appealed further.

By final judgment of 29 December 2000 the Supreme Administrative Court quashed the lower-court's judgment and the order of 16 July 1998 of the Sofia Municipality. However, it based its decision on the understanding that it was not necessary for the Sofia Municipality to formally revoke the three orders of 15 April 1988, because they had been automatically revoked by virtue of the judgment of 7 October 1994, irrespective of the fact that only part of the Property had been restituted.

No apartments or other compensation have thereafter been provided to the applicants in respect of the un-restituted Property. Moreover, the authorities seem to deny the existence of such rights, as evidenced, for example, by a letter to that effect from the Ministry of Foreign Affairs of 19 April 2000.

In addition, there is no indication that the authorities ever reimbursed the applicants any of the payments they made to the State in respect of (1) the difference in the value of the apartments offered as compensation and the expropriated Property (BGL 34,036.94) or (2) the value of the restituted Property (BGL 22,697.81), which they paid to the State, but had never actually received from it, because that amount had been directly credited against the value of the apartments they were to receive.

(b) Eviction of the first applicant

Notice was given to the first applicant on 10 August 2000 to vacate the temporary housing provided in April 1988 (see part A.1. above), with which he apparently did not comply.

By order of 13 November 2000 (№ РД-15-552/13.11.2000 г.) the Sofia Provincial Governor recaptured the flat provided to the first applicant as temporary housing because it was being held without a valid legal ground and ordered that it be vacated. The first applicant appealed against the order on an unspecified date.

By judgment of 12 December 2001 (№ 8424/12.12.2001 г.) the Supreme Administrative Court found against the first applicant and upheld the order to recapture and vacate the flat. The court considered that following the judgment of 7 October 1994 for restituting part of the Property (see Part A.2. above) the first applicant no longer had a right to receive compensation in the form of an apartment and, therefore, had no valid legal ground to continue to occupy the temporary housing previously provided to him on that basis. The first applicant appealed against the judgment on an unspecified date.

By final judgment of 12 June 2002 the extended panel of the Supreme Administrative Court found against the applicant and upheld the lower-courts judgment. The court reiterated the findings of the lower-court and considered that under the TUPA (Article 5 § 2) the right of the applicant to use the temporary housing had expired six months after the judgment of 7 October 1994 (see Part A.2. above) had entered into force. He therefore had no valid legal ground to continue occupying the flat given to him as temporary housing in April 1988.

On an unspecified date the first applicant vacated the flat.

(c) Attempted eviction of the second applicant

Similar to the first applicant (see Part A.3.(b) above), notice was given to the second applicant's ancestor by letter of 11 August 2000 to vacate the temporary housing provided in April 1988 (see part A.1. above), with which she apparently did not comply.

By order of 13 November 2000 (№ РД-15-551/13.11.2000 г.) the Sofia Provincial Governor recaptured the flat provided to the second applicant's ancestor as temporary housing because it was being held without a valid legal ground and ordered that it be vacated. The second applicant appealed against the order on an unspecified date.

By judgment of 12 December 2001 (№ 8426/12.12.2001 г.) the Supreme Administrative Court found in favour of the second applicant and declared the order of 13 November 2000 null and void as it had not been addressed to the second applicant, but to her ancestor who had passed away in 1997. The judgment entered into force on an unspecified date.

In the meantime, by notice of 3 December 2001 the first applicant was invited to vacate the flat, with which she apparently did not comply.

By order of 9 January 2002 (№ РД-15-012/09.01.2002 г.) the Sofia Provincial Governor recaptured the flat provided to the second applicant as temporary housing because it was being held without a valid legal ground

and ordered that she vacate it. The second applicant appealed against the order on an unspecified date.

By judgment of 16 July 2002 the Supreme Administrative Court found in favour of the applicant and revoked the order of 9 January 2002 of the Sofia Provincial Governor. The court found, *inter alia*, that the second applicant was validly occupying the flat as it had been provided in April 1988 (see part A.1. above) as temporary housing till completion of an apartment which was still due to her as compensation for the expropriation of the Property. Insofar as that compensation had still not been provided the court found that the applicant had a valid legal ground to remain in the flat and could not be required to vacate it. The Sofia Provincial Governor appealed against the judgment on an unspecified date.

By final judgment of 15 November 2002 the extended panel of the Supreme Administrative Court dismissed the appeal and upheld the lower-court's judgment in favour of the applicant. The court reiterated the findings of the lower-court that the second applicant had a right to continue to occupy the temporary housing till completion of her apartment due as compensation for the expropriation of the Property.

In the proceedings which ended by final judgment of 15 November 2002 the Supreme Administrative Court does not seem to have been aware that part of the Property had been restituted under the judgment of 7 October 1994.

(d) Arrest and questioning of the second applicant

On 9 October 1998 the second applicant was arrested, questioned and released following a complaint from the Polish Embassy for disturbing their work and for making numerous harassing phone calls.

B. Relevant domestic law and practice

1. The expropriation of private property for public use

The relevant law and practice regarding the expropriation of private property for public use has been summarised in the judgment of *Kirilova and Others v. Bulgaria* (nos. 42908/98, 44038/98, 44816/98 and 7319/02, §§ 72-79, 9 June 2005).

2. The restitution of private property expropriated for public use

In 1992 the Restitution of Some Expropriated Property Act (the "RSEPA") was enacted which provided for the restitution of expropriated property if specific conditions were met.

The RSEPA provides, *inter alia*, that upon revocation of an expropriation, any dwellings or other property received by the claimant in

compensation shall pass to the municipality by the ruling or judgment of revocation (Article 5 § 1). In addition, it provides that if a restituted owner occupies temporary housing then he must vacate it within six months as of the date of entry into force of the ruling or judgment for granting the restitution (Article 5 § 2).

The RSEPA also provides that if a restituted owner had been paid monetary compensation, the ruling or judgment for granting the restitution becomes effective upon reimbursement of the received monetary compensation (Article 6 § 1). Any amounts paid by a restituted owner to cover the difference between the value of an expropriated property and a property received as compensation was subject to reimbursement to said restituted owner within two months of the date of the ruling or judgment for granting the restitution (Article 6 § 2).

In cases relating to expropriations of property for a single public works' project, the practice of the domestic courts' has been to find that even if only partial restitution is granted of a property then the whole compensation passes to the State, in the case of dwellings or other property, or is subject to reimbursement, in case of paid monetary compensation (решение № 1471 от 21 ноември 1994 г. по адм.д. № 4778/1993 г. на ВС, III г.о.). No reported cases have been identified where a property had been expropriated for two or more distinct public works' projects and restitution had been granted only in respect of the area expropriated only for one of those projects.

COMPLAINTS

1. The applicants make several complaints, relying on Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention:

(a) They complain of the expropriation by the State of their ancestors' property in 1987.

(b) The applicants further complain of the fairness of the restitution proceedings in that the Sofia City Court, by judgment of 7 October 1994, decided wrongly and restituted to them only part of the property previously owned by their ancestors.

(c) The applicants also complain that the authorities have failed, for over fourteen years, to provide them with the apartments granted to them as compensation for the expropriation of their ancestors' property. They contend that the authorities failed to comply with the expropriation and compensation orders and the judgment of 7 October 1994. In particular, they argue that under said judgment their rights to receive such apartments were clearly recognised and served as a basis for the court's decision to require them to pay, in cash, the value of the restituted Property, money

which they had never directly received from the State at the time of the expropriation. In addition, they note that they had also previously paid the difference between the value of the expropriated Property and the apartments offered as compensation, which the authorities never reimbursed.

2. The first applicant (Mr P. Parvanov) complains of the fairness of the proceedings regarding his eviction from the temporary apartment. He argues that the courts, by judgments of 12 December 2001 and 12 June 2002, decided wrongly by upholding the order for his eviction. He refers, in this respect, to the subsequent judgments of 16 July 2002 and 15 November 2002 in favour of the second applicant which essentially relate to the same facts and circumstances.

3. The applicants also complain that they were harassed by the authorities to stop their legal actions.

THE LAW

A. The applicants' complaints that the authorities have not built and delivered the apartments due to them as compensation for the expropriation of their ancestors' property

The Court considers that the applicants' complaints fall to be examined under both Article 1 of Protocol No. 1 to the Convention and Article 13 of the Convention:

Article 1 of Protocol No. 1 to the Convention provides the following:

> "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 of the Convention provides the following:

> "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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of these complaints and that it is therefore necessary, in

accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

B. The remainder of the applicants' complaints

The Court has examined the remainder of the applicants' complaints as submitted by them. However, in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the complaints concerning the authorities failure to build and deliver to the applicants the apartments due as compensation for the expropriation of their ancestors' property (Article 1 of Protocol No. 1 and Article 13 of the Convention);

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President