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. 65850/01
by Rumen Ivanov TODOROV
against Bulgaria

The European Court of Human Rights (First Section), sitting on 29 September 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 25 October 2000,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Rumen Ivanov Todorov, is a Bulgarian national who was born in 1960 and lives in Ahtopol.

A. The circumstances of the case

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

On 11 May 1990 the applicant obtained construction rights over a plot of municipal land in Rezovo, the municipality of Tsarevo (formerly Michurin). In accordance with the relevant law as in force at the time, the municipal authorities issued an order granting construction rights and also entered into a contract with the applicant. The surface of the plot was 700 square metres. The price was set at 700 Bulgarian levs ("BGL"), which the applicant paid on 14 May 1990. At that time BGL 700 was the equivalent of, approximately, three average monthly salaries in the country.

The contract stipulated, *inter alia*, that the applicant's right to construct a building would expire in the event of him failing to terminate the building within five years.

The applicant hired an architect and on 19 July 1991 he obtained a building permit for a two-storey 111 square metres house to be constructed on the plot. The applicant also purchased construction material, transported it to Rezovo and stored it there.

On an unspecified date in the summer of 1991 the municipal building authorities refused to authorise the commencement of the construction works as the technician who had visited the site had noted that a high-voltage electricity conduit passed over the plot.

It appears that during the same period persons claiming rights over neighbouring plots obstructed the applicant's preparations for the construction of his house. In 1992 the applicant brought an action against them, seeking damages. The municipality of Tsarevo was summoned as a third party. By judgment of 2 March 1993 the Bourgas District Court dismissed the applicant's claim against the neighbours, noting that the impossibility for the applicant to realise his project was only imputable to the municipality which had sold him construction rights over the plot in disregard of the fact that constructing a building there was not allowed owing to the passage of a high-voltage electricity conduit.

On an unspecified date in 1993 the applicant wrote to the municipality asking them to provide him with another plot. He allegedly received assurances that that would be done later.

In October 1995 the applicant travelled to Germany and started work there.

On 29 January 1996 the mayor of Tsarevo issued an order cancelling the applicant's construction rights.

The applicant learned about the order in the summer of 1996, when he returned from Germany. On an unspecified date his wife's attempt to appeal against it was rejected as being out of time.

On an unspecified date in 1997 the applicant brought an action against the municipality of Tsarevo seeking restitution of the price paid by him under the 1990 contract and damages for breach of contract. Initially he claimed BGL 100,000. On 31 March 1998 he increased the claim to BGL 1,000,000.

By judgment of 27 July 1998 the Tsarevo District Court granted the claim partially. Upon the applicant's appeal, on 24 March 1999 the Bourgas Regional Court increased the award. The final judgment was that of the Supreme Court of Cassation of 15 May 2000 which upheld the Regional Court's judgment.

The courts found, *inter alia*, that the Tsarevo municipality had breached the 1990 contract with the applicant in that it had granted him construction rights over a plot which could not be built over and had failed to remedy that situation despite his complaints. It followed that the municipality was liable to pay all ensuing damages. The applicant had proven the alleged losses in respect of the price paid by him in May 1990 to the municipality (BGL 700), the architect's fees paid by him in 1991 (BGL 1,200) and the expenses made by him in 1991 for the transport of construction material (BGL 8,000).

The remainder of his claims, which concerned alleged loss of gains, was dismissed as unproven. The applicant had stated that in normal circumstances he would have completed the house within a year and would have rented it each year during the summer holidays. The courts found that the applicant had not substantiated the alleged loss of gains. He had relied solely on information about the average property and rental prices at the relevant time.

The amount awarded to the applicant was thus BGL 9,900 plus interest. Owing to the depreciation of the Bulgarian currency, as of March 1999, when the award became enforceable, it represented, together with all interest accrued, the equivalent of not more than EUR 15.

In his appeals before the Regional Court and the Supreme Court of Cassation the applicant protested that the courts awarded him sums which had become worthless. He insisted that the award should be commensurate to the value of the actual damage he had sustained.

In reply to those arguments the courts stated that in accordance with the relevant law the applicant was entitled to compensation for the actual damage suffered at the time when it was occasioned.

B. Relevant domestic law

In accordance with the relevant law, the right to construct a building is a right *in rem*. The holder becomes the owner of the building, while the land remains the property of its original owner.

In accordance with section 67 of the Property Act the right to construct a building expires – and the owner of the land recovers full ownership rights – if the construction is not completed within five years.

COMPLAINTS

1. The applicant complains, relying on Article 6 and Article 1 of Protocol No. 1 of the Convention, that he suffered damage imputable to the State but was only given a token compensation, as the courts did not take into consideration the monetary depreciation in the country.

2. The applicant also complains that the order of 29 January 1996 of the mayor of Tsarevo, cancelling his right to construct a building, was unlawful.

3. The applicant complains, relying on Article 6 and Article 1 of Protocol No. 1 of the Convention, that the courts wrongly dismissed his claims for damages in respect of alleged loss of gains.

THE LAW

1. The applicant complains, relying on Article 6 and Article 1 of Protocol No. 1 of the Convention, that he suffered damage imputable to the State but was only given a token compensation, as the courts did not take into consideration the monetary depreciation in the country.

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint 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.

2. The applicant complains that the mayor's order of 29 January 1996 was unlawful and in breach of Article 1 of Protocol No. 1 of the Convention.

The Court observes that the applicant did not appeal against the order and that his wife's appeal was rejected as inadmissible. In these circumstances, the Court finds that the applicant has failed to exhaust all domestic remedies within the meaning of Article 35 § 1 of the Convention. It follows that the above complaint must be rejected in accordance with Article 35 § 4 of the Convention.

3. The applicant also complains, relying on Article 6 and Article 1 of Protocol No. 1 of the Convention, that the courts dismissed his claim for damages in respect of loss of gains and accepted as proven only a portion of his claims.

The Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *Schenk v. Switzerland*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46) and *Garcia Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

In the present case, the domestic courts found that the applicant had not proven his claims in respect of alleged loss of gains. On the basis of the material before it, the Court does not consider that the domestic courts acted arbitrarily or otherwise in breach of Article 6 or Article 1 of Protocol No. 1 to the Convention when assessing the evidence adduced by the applicant in the domestic proceedings.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant's complaints concerning the alleged inadequate compensation for the damage occasioned by the Tsarevo municipality;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President