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. 48380/99
by Lubomira Nedkova TODOROVA
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 4 February 1999,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mrs Lubomira Nedkova Todorova, is a Bulgarian national who lives in Plovdiv. She was represented before the Court by Mr M. Ekimdjiev, a lawyer practising in Plovdiv. 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 circumstances of the applicant's case

By judicial decisions of 1996, 1997 and 1998 the applicant's title to her plot of land and a building (which had been given to her grandparents in 1953 in compensation for the expropriation of their plot of land and small house) was declared null and void. Ownership thereof was bestowed back to the heirs of the persons from whom the property had been nationalised in 1949.

In 1953 the applicant's grandparents' plot of land and small house in Stara Zagora were expropriated for the construction of an administrative building. The expropriation was undertaken outside the scope of the nationalisation laws of that period (it was not punitive in nature) but concerned building plans in the town.

The applicant's grandparents received in compensation ownership of another plot of land and a building which had been nationalised in 1949 from third persons.

In 1992 the heirs of the pre-nationalisation owners brought an action against the applicant relying on section 7 of the Restitution Law and also on the general *rei vindicatio* provision of the relevant property law.

On 15 February 1994 the District Court dismissed the claim as there had been no breaches of the law in 1953. On appeal, on 28 December 1994 the District Court's judgment was quashed by the Regional Court and the case remanded for renewed examination.

By judgment of 12 April 1996 the District Court declared null and void the 1953 expropriation and compensation order, relying on section 7 of the Restitution Law. The court found that at the relevant time an expropriation could only be effected by decision of the Council of Ministers whereas the property of the applicant's grandparents had been expropriated - and they had been given another property in compensation - by decision of the regional authority. As a result, neither the applicant's grandparents nor the applicant, their heir, had ever become owners of the property provided in compensation. There had also been other procedural violations concerning the commission which had assessed the value of the property.

The District Court also granted the *rei vindicatio* claim and ordered the applicant to vacate the property.

On appeal, on 14 March 1997 the Regional Court upheld the District Court's judgment adding that the fact that the applicant's grandparents had not been responsible for any omission was irrelevant.

The applicant submitted a petition for review (cassation). In its judgment of 18 December 1998 the Supreme Court of Cassation noted that section 7 of the Restitution Law only concerned acquisitive transactions whereas in the case before it the defendant's title had been an administrative decision. Nevertheless, the conclusion that the 1953 compensation order was null and void and that the applicant's title was therefore also void had been correct. In these circumstances, the applicant's grandparents had never become owners of the plot of land and the building they had received in 1953. As that estate had remained State property until 1992 (acquisition through adverse possession against the State was not possible), in 1992 the pre-nationalisation owners had acquired it back *ex lege*, under the general rule of the Restitution Law.

The court therefore modified the characterisation of the claim in law and upheld the lower courts' judgments insofar as they granted the *rei vindicatio* claim and ordered the applicant to vacate the property at issue. However, insofar as they declared null and void the 1953 order also in its expropriation part, the lower courts had acted beyond their jurisdiction as circumscribed by the civil claim. That part of the judgments had to be quashed.

The Supreme Court of Cassation disregarded the applicant's argument that the District Court's judgment of 12 April 1996 had been null and void as it had been adopted and signed by the presiding judge at a time when she had already quitted her job as a judge. That argument had also been disregarded by the Regional Court.

B. Background facts and relevant domestic law and practice

These are summarised in application no. 43278/98, Velikov and Others v. Bulgaria.

COMPLAINTS

The applicant complained, relying on Article 1 of Protocol No. 1 to the Convention and its Article 13, that she was deprived of her property through the operation of legislation and judicial practice which were contrary to basic principles of law, did not have a legitimate aim in the public interest and in any event placed a disproportionate burden on her despite the fact

that neither she nor her grandparents whom she inherited had been responsible for any breach of the law. In fact, the events in her case amounted to an arbitrary confiscation.

The applicant also complained under Articles 6 and 13 of the Convention that the proceedings had been excessively lengthy and unfair because the District Court judge had finalised the text of the judgment at a time when she had already left her job as a judge. Also, the higher courts had not dealt with the applicant's objection in this respect.

THE LAW

1. The applicant complained, relying on Article 1 of Protocol No. 1 to the Convention, taken alone and in conjunction with Article 13, that she was the victim of an arbitrary deprivation of property without adequate compensation. The relevant provisions of the Convention provide:

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."

The Government's submissions

The Government did not comment on the particular facts in the applicant's case but made general observations concerning the cases of individuals who lost their property in judicial proceedings under the Restitution Law.

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 acquired nationalised property from the State. The applicant's case had been dealt with by three levels of jurisdiction. Thus, the conclusion that the apartment had been acquired 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.

The Government also considered that the relevant law and practice had not imposed an excessive burden and had not violated the principle of proportionality.

The Government did not state their opinion on the question whether or not the applicant was entitled to compensation.

The applicant's submissions in reply

The applicant criticised the Government's observations as being of a general nature, without an analysis *in concreto* of the legal and practical issues in her case.

The applicant submitted that she had enjoyed many years of undisturbed possession, paid property tax and maintained the property obtained from the State as compensation for her grandparents' expropriated property. She had never had any reason to doubt the lawfulness of her title and had been the owner in good faith.

The applicant submitted that while the restitution of State owned property had been in the public interest and thus pursued a legitimate aim, in her case there was no legitimate aim as she had to surrender her property received in compensation for an expropriation, in order to satisfy the restitution claims of other individuals.

The applicant further maintained that the Supreme Court of Cassation had wrongly considered that section 7 had been inapplicable and had arbitrarily applied the general rules of civil law.

Furthermore, in her view the deprivation of property she had suffered had not been “prescribed by law” as the applicable law opened the door to arbitrariness. According to the applicant, 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 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, the relevant law and practice had set the scene for heated judicial battles over details in legal acts dating from decades ago. In the applicant's view, the large majority of real estate titles in Bulgaria dating from the recent past involved omissions of some nature. Instead of taking into account the practice at the relevant time, the open-ended language of the Restitution Law and its judicial interpretation had led to a situation where any legal act dating from the recent past might at any time be nullified.

In the applicant's view, the Restitution Law and the judicial practice applying it did not meet the Convention requirements of clarity and foreseeability of the law. The variations in the legal characterisation of the claims in her case demonstrated the unforseeability of the relevant 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 her property rights the applicant stated that there was a clear imbalance in that she was not entitled to any compensation whatsoever.

In particular, she could not seek the restitution of her grandparents' house as it had been destroyed and a State administration building had been constructed over the plot. However, the Restitution Law provided for restitution only in circumstances where the nationalised property still existed. Furthermore, she could not claim compensation bonds under section 5(3) of the Compensation Law as that provision only concerned persons who had lost cases under section 7 of the Restitution Law, whereas in her case the Supreme Court of Cassation characterised the claim as not falling within the scope of section 7. Other provisions of the Compensation Law provided for compensation for persons who could not obtain restitution of property expropriated pursuant to a series of confiscatory laws dating from the 1940s, when property had been nationalised without compensation. However, the applicant's grandparents' house had been expropriated pursuant to other legal provisions and they had received compensation at the time.

Even if the applicant tried to seek compensation by arguing that her position was analogical to the situation covered by other restitution legislation – the legislation according to which property expropriated for building planning or other purposes could be claimed back under certain conditions – she would be required to return the compensation received for the expropriation of her grandparents' house. Obviously that was impossible

as what she would need to return was the apartment she lost in the impugned judicial proceedings.

The applicant stated, in sum, that after 1992 without any fault on her part she saw herself implicated in lengthy judicial battles to preserve her own property and eventually lost it without compensation owing to an unclear and unjust restitution law and decades-old administrative omissions on the part of municipal officials.

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 applicant complained under Articles 6 and 13 of the Convention that the proceedings had been excessively lengthy, that they had been unfair because her argument as regards the nullity of the District Court's judgment had not been dealt with and that she did not have an effective remedy in respect of those violations of her rights.

The Court, noting the failure of the applicant to substantiate any detail as regards the course of the proceedings and the reasons for any adjournments or delays and having regard to the complexity of the dispute and the fact that the case was examined by three levels of jurisdiction within approximately six years, finds that in the particular circumstances the complaint of the length of the proceedings is unsubstantiated and therefore manifestly ill-founded.

As regards the applicant's remaining complaints, it is undisputed that in the District Court her case was heard by a judge. The applicant has not shown convincingly that the mere fact that the judgment was finalised by the judge after she had left her job might raise an issue under Bulgarian law. In these circumstances it was not surprising that the upper courts did not discuss the applicant's argument in this respect. The Court thus finds that the applicant's remaining complaints under Article 6 are unsubstantiated and manifestly ill-founded. As the applicant did not have an arguable claim under that provision, Article 13 of the Convention did not apply.

It follows that this part of the application 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

Declares admissible, without prejudging the merits, the applicant's complaints that she was the victim of an unlawful and unjustified interference with her property and did not have effective remedies in this respect;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President