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. 73465/01
by Regina and Konstantin TZILEVI
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 11 May 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, Mrs Regina Tzileva and Mr Konstantin Tzilev, are Bulgarian nationals, who were born in 1949 and 1942 respectively and live in Sofia. The fist applicant was a ballet dancer and the second applicant was a film producer. They were represented before the Court by Mr Y. Grozev, a lawyer 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 decision of 1994, 1998 and 2000 the applicants' title to their apartment (which they had purchased from the local municipality in 1977) was declared null and void. Ownership thereof was bestowed back to the person from whom the apartment had been nationalised in 1949.

In 1970 the first applicant became a tenant in a state-owned two-room 60 square metres apartment in Sofia. On 10 June 1977 the applicants purchased the apartment from the local municipality and reimbursed the full price within the following years. The applicants' family later made improvements in the apartment.

In February 1993 Mr N., the pre-nationalisation owner of the apartment, brought an action against the applicants under section 7 of the Restitution Law. In his claim Mr N. relied on all possible grounds under section 7. On 6 June 1994 the Sofia District Court dismissed the claim.

Upon the plaintiff's appeal, on 15 July 1998 the Sofia City Court quashed the lower court's judgment and granted the claim as the administrative decision authorising the 1977 sale-purchase contract had been signed by the deputy mayor and not by the mayor personally.

The applicants filed a cassation appeal. They argued that even if the administrative decision authorising the transaction had been signed by a deputy mayor, the sale-purchase contract itself had been signed by the mayor.

On 28 November 2000 the Supreme Court of Cassation dismissed the appeal and upheld the Sofia City Court's judgment.

Between 1999 and 2001 the applicants addressed numerous unsuccessful requests to the local municipality asking to be provided tenancy of a municipal dwelling.

In 2001 the heirs of the pre-nationalisation owner brought a *rei vindicatio* action against the applicants. As the applicants had no place to live, they decided to oppose the claim and gain time.

In 2001 the applicants requested compensation by bonds. On an unspecified date an expert assessed the value of their apartment at 45,000 Bulgarian levs ("BGN") (the equivalent of about EUR 23,000). As of the date of the latest communication from the applicants, October 2003, they expected to receive shortly bonds with face value BGN 45,000. According to the applicants, the real value of the bonds was between 15 and 20 % of their face value.

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 under Article 1 of Protocol No. 1 to the Convention that they had been the victims of an arbitrary and unjustified expropriation of their property.

THE LAW

The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had been the victims of an arbitrary deprivation of property without adequate compensation. Article 1 of Protocol No. 1 provides:

> "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."

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 the particular case of the applicants, the fact that Mr N. had initially based his action on all possible grounds under section 7 was an illustration of this provision's vague meaning.

Furthermore, according to the applicants, the applicable law, by failing to distinguish between serious and trivial omissions and between individuals having acted in good faith and those in bad faith, did not afford the minimum guarantees against arbitrariness. The courts had refused to take into account the trivial nature of the omission found in the applicants' case and the fact that the applicants had not had control over which municipal official had signed the necessary papers. Moreover, the law and the courts had disregarded the fact that the events at issue had taken place during the communist rule, in an environment which had been characterised by unfettered administrative power and disrespect for the rule of law, and

where administrative omissions had been common but had not served as grounds for nullification of titles in property.

The applicants also submitted that while compensating the pre-nationalisation owners was a legitimate aim in the public interest, the Bulgarian authorities had singled them out in an arbitrary fashion as the persons to bear the burden. In particular, throughout the years of communist rule the State had sold all kinds of residential property to individuals, including newly built dwellings. All buyers had been in an identical position at the time, regardless of the property they had bought. By virtue of section 7, however, those who had bought a previously nationalised apartment had to suffer the consequences of the restitution without any adequate compensation.

The applicants stated 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 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.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President