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. 43278/98
by Ilia VELIKOV and Others
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 with the European Commission of Human Rights on 10 April 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

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 are Bulgarian nationals.

Mr Ilia Velikov ("the first applicant") was born in 1923. He passed away on 27 April 2002. His sons, the second and the third applicants, stated that they maintained the application.

Mr Atanas Velikov ("the second applicant") was born in 1944. Mr Rossen Atanassov ("the third applicant") was born in 1947. They were represented before the Court by Mr B. Voinov and Mr R. Raykovski, lawyers 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 developments in the applicants' case

On 27 May 1968 the first applicant and his two sons, the second and the third applicants, bought jointly from the Sofia municipality a five/six room apartment which had been nationalised in 1949. They made a 20% down-payment and reimbursed the remainder within the following years.

In 1978 the apartment was divided into two apartments which became the ownership of the second and the third applicants respectively. In 1991 the second applicant, Mr Atanas Velikov, transferred his title to his two sons, Alexander and Ilia A. Velikov.

In February 1993 the heirs of the pre-nationalisation owner of the whole apartment brought an action against the applicants under section 7 of the Restitution Law.

On 17 February 1995 the Sofia District Court declared the 1968 contract null and void as contrary to the law and restored the plaintiffs' ownership rights.

The District Court found that the 1968 contract had not been signed by the competent mayor. The competent authority under the regulations (subordinate legislation) in force at the relevant time had been the mayor of the relevant district (председател на ИК на общински НС) and not his superior, the mayor of the region which included that district (председател на ИК на Окръжен/Градски НС). The regional mayor's power to approve sales of apartments had only been introduced by an amendment that had entered into force in 1969, several months after the relevant dates.

In the applicants' case the decisions approving the contract had been issued by the deputy mayor of the region of Sofia, the superior of the competent mayor of the relevant district. A superior administrative body could not validly usurp the powers vested in their subordinates in matters

that were not subject to appeal. The contract itself had been signed "for" the competent mayor and not by him.

On a final point, the District Court examined and dismissed the allegation that the first applicant, who had been registered as an "anti-fascist and anti-capitalist veteran" - a registration which at the relevant time carried a number of privileges guaranteed by law - had abused his position to obtain the apartment at issue. In the absence of concrete evidence the fact of his registration was insufficient proof.

The applicants appealed.

On 20 January 1997 the Sofia City Court dismissed the appeal stating that the lower court's judgment had been correct. Thereupon, the decision declaring the applicants' title null and void entered into force.

On 2 April 1997 the plaintiffs, the restored owners, invited the applicants to leave the apartment.

Upon the applicants' petition for review (cassation), on 27 October 1997 the Supreme Court of Cassation upheld the lower courts' judgments while adding that there was circumstantial evidence that the first applicant might have abused his position: there was information that he might have been given priority, that he had made statements against the other candidates and that when applying to purchase the apartment in 1968 he had stated that he should be "given his due" as a veteran.

On 25 November 1997 the restored owners brought an action for *rei vindicatio* against the applicants and the second applicants' sons who in 1991 had become the owners of one of the two apartments, after the reconstruction of the property in 1978. On an unspecified date in the beginning of 2000 the applicants and their sons vacated the two apartments and the pre-nationalisation owners took possession thereof.

Since October 2000 the sons of the second applicant have been renting an apartment at the monthly rate of 100 Euros ("EUR"). They unsuccessfully requested the Sofia municipality to provide them with a municipal apartment at fixed rental rates. The third applicant also made such a request but was not offered an apartment. He and his wife eventually moved into her parents' two-room apartment.

On an unspecified date the applicants and their sons requested compensation by bonds. They received bonds with a nominal value of 84,756 Bulgarian levs ("BGN"), the equivalent of approximately EUR 43,000. According to the applicants, as of October 2003 those bonds could not be sold for more than 21.2 % of their face value. Their real value was, therefore, approximately EUR 9,200.

The applicants also submitted that owing to an omission of the regional administration their bonds had not been registered with the Central Depositary within the relevant time-limit under the Transactions with Compensatory Instruments Act and that, therefore, they were unable to sell their bonds.

B. The relevant background, legal framework and practical developments

1. The nationalisation of real property in Bulgaria in the 1940s and 1950s; housing regulations and policies until 1990

After 1945 the communist regime in Bulgaria introduced a series of nationalisation laws. As regards housing, the policy was to limit private real estate ownership to one dwelling per family and to take away from their owners apartments allegedly exceeding their needs. All city apartments "in excess" were nationalised. In some cases the owners received State bonds in compensation. Owing to legislation and regulations modifying the conditions of payment on these bonds, in practice real compensation was never received by the owners.

The nationalised apartments were allocated to municipal funds which managed them and rented them at fixed low rates.

Special legislation and regulations established a system of categorisation of those in need of housing and provided for rules according to which the municipal funds rented out their available apartments on the basis of need. The applicable law also provided for a possibility for the tenants to buy the apartments under certain conditions. These rules were equally applicable to tenants in newly built State apartments.

A large number of nationalised apartments were sold to tenants in the 1960s and 1970s pursuant to a new housing policy whose purpose was the accumulation of financial resources for the construction of new dwellings.

In practice, at all relevant times and until 1990 an individual in need of housing could only buy an apartment by applying to a competent State body. After the nationalisation and until 1973 real property sale-purchase transactions between individuals were possible under certain conditions but State authorisation was required. Between 1973 and 1990 direct sale-purchase contracts of city dwellings were prohibited.

2. The process of restitution of property after the fall of the communist regime; section 7 of the Restitution Law

After the fall of the communist regime in 1990, Parliament enacted legislation aiming at restoring justice for those whose property had been nationalised in the 1940s and 1950s without compensation, or for their heirs.

A number of denationalisation laws covering different types of property (industrial plants, shops, dwellings, agricultural land, etc.) were adopted.

The Law on the Restitution of Ownership of Nationalised Real Property ("the Restitution Law"), which entered into force in February 1992, provided, *inter alia*, that the former owners, or their heirs, of certain types of real property nationalised by virtue of several specific laws dating from

the period between 1947 and 1952, became *ex lege* the owners of their nationalised property if it still existed, if it was still owned by the State and if no adequate compensation had been received at the time of the nationalisation.

Section 7 provided for an exception to the requirement that the real property be still owned by the State. It provided that even if certain property had been acquired by third persons after the nationalisation, the former owners or their heirs could still recover it if the third persons in question had become owners either in breach of the law or by virtue of their position in the Communist party or through abuse of power. This provision was apparently motivated by the belief that during the communist period there had been many cases in which the privileged of the day had obtained apartments unlawfully.

Section 7 of the Restitution Law was the sole restitution provision which authorised the taking of property from third persons to satisfy the claims of former owners. In practice, however, there were cases in which the courts allowed such claims by reference to the general provisions of civil law concerning nullity of transactions, combined with section 1 of the Restitution Law (реш. N: 2109, 25.1.99 г. по гр. д. N: 1754/97 г., ВКС-IV; see application no. 48380/99, Todorova v. Bulgaria).

In all cases where pre-nationalisation owners could not recover their real property as it did not exist or had been validly obtained by third persons, the Restitution Law envisaged the adoption of separate legislation on a compensation mechanism. Such legislation was adopted in November 1997 (see about the Compensation Law below).

In cases under section 7, the former pre-nationalisation owners had to bring an action before the courts against the post-nationalisation owners. The initial time-limit was one year after the entry into force of the Restitution Law.

3. Judicial practice and consequences of judgments under section 7

a) judicial practice under section 7

In some cases the ground for annulment was a finding that there had been abuse of office or of a position in the Communist party.

In the vast majority of cases under section 7, however, the decisive issue was whether the acquisitive transaction involved breaches of the law.

In a large number of cases the omission in question was the fact that the sale contract had been signed by a deputy mayor and not by the competent mayor. In other cases the relevant files retrieved from the archives did not contain proof that the contract had been approved by an administrative authority as required by regulations in force at the relevant time. Other grounds for annulment included breaches of regulations dating from the 1950s and the 1960s establishing a link between the number of family

members and the number of rooms they were entitled to, breaches of requirements such as that the buyer should be a tenant or an employee of the State agency or enterprise using the apartment, etc.

In some cases the post-nationalisation owners invoked their good faith and considered that, even if there had been a defect in the transaction, they had acquired the property through adverse possession. That argument was rejected by the courts which found that the question of good faith or bad faith was irrelevant and that section 86 of the Property Act provided that State property could not be acquired through adverse possession.

The practice of the Supreme Court (реш. No. 1623 от 10.03.1994 по гр.д. No. 186/1993, ВС-IV; реш. No. 1036 от 13.07.1994 по гр.д. No. 9/1994, ВС-IV) and its Interpretative Decision No. 1 (ТР 1/95, ОСГК, Бюл. ВС кн. 4/95) have clarified that the judgments under section 7 are declaratory judgments and that their effect is to declare the sale-purchase contract null and void *ab initio*, as contrary to the law, based on the respective provisions of the general civil law.

That interpretation was confirmed by the Constitutional Court in its judgment of 18 January 1996 (реш. 1 по к.д. No. 29/95, Д.В. бр. 9/96) refusing a motion to declare unconstitutional section 7 of the Restitution Law. The Constitutional Court considered that in cases under this provision the persons who had purchased nationalised property from the State by virtue of a void contract "had never become owners ..." and that therefore section 7 did not constitute an expropriation provision.

b) consequences for the post-nationalisation owners

In the same judgment the Constitutional Court dealt with the argument - advanced by those who considered that section 7 was unconstitutional - that the law affected disproportionately the rights of the post-nationalisation owners many of whom had not done anything unlawful. It stated:

> "The Constitutional Court shares the [petitioners'] concern that there may be many cases where the breaches of the law ... resulted from [acts of] the administration... That fact, however, does not concern the nullity of the transactions ... The transaction[s] remain null and void regardless of the fact which party had breached the law. The question of responsibility for damages in such cases is a separate issue. The Constitutional Court considers that section 7 of the [Restitution Law] does not exclude claims for damages against State bodies or State officials who have breached the law when effecting the transactions. The possible legislative elaboration of that responsibility in cases under section 7 falls within the competence of Parliament."

A person whose title has been declared null and void could in principle claim from the respective municipality the price that he, she or their ancestors had paid when buying the apartment from the municipality (usually decades ago). However, owing to the depreciation of the national currency and the established practice of the Bulgarian courts refusing re-valorisation, the applicants maintain that such claims cannot produce any reasonable result.

Despite the Constitutional Court's remark, Parliament has not adopted a law elaborating on possible civil liability of officials or State bodies responsible for a breach of the law that led to nullification of a property title. After the adoption in 1995 and 1996 of special rules for compensating post-nationalisation owners who had lost cases under section 7 of the Restitution Law (see below), recourse to general liability claims would be excluded by virtue of section 8 § 2 of the Law on State Responsibility for Damage (Закон за отговорността на държавата за вреди причинени на граждани). The Supreme Court of Cassation has decided in that sense in a judgment of December 2004. In that case a woman had lost a case under section 7 on the basis that she had purchased her apartment from the municipality in violation of the relevant regulations. Arguing that municipal officials had been responsible for that violation, she sought damages. The Supreme Court found, *inter alia*, that the State Responsibility for Damage Act had been adopted after the date of the acquisitive transaction and had thus been inapplicable and that in any event damages could only be awarded if the allegedly unlawful act of the municipality had been repealed in separate proceedings. The court further held that Parliament had provided for a special compensation mechanism – through housing compensation bonds (see below) (реш. 1893 от 1.12.2004 по гр.д. 1518/2003 на ВКС).

Pursuant to civil procedure law, post-nationalisation owners whose title was declared null and void are liable to pay to the restored pre-nationalisation owners their costs in the proceedings.

c) special legislation on compensation for persons who lost their apartments in cases under section 7: developments until mid-1997

The initial text of the Restitution Law of 1992 did not provide for any compensation to be paid to persons who had lost their property by virtue of judgments under section 7.

On 19 April 1995, 14 September 1995, and 30 May 1996 Parliament adopted amendments to the Restitution Law concerning the conditions under section 7 and the issue of compensation (Д.В. броеве 40/1995, 87/1995, 51/1996). Most of these amendments were thereafter declared unconstitutional by the Constitutional Court (реш. No. 9 по к.д. No. 4/95, Д.В. бр.66/95; реш. No. 20 по к.д. No. 24/95, Д.В. бр. 94/95; реш. No. 11 по к.д. 10/96, Д.В. бр. 61/96, попр. Д.В. бр.87/96). In particular, as regards compensation, the Constitutional Court struck down the new provisions as they stated that the apartments should be vacated only after receipt by the post-nationalisation owners of compensation to be paid by the State: it was unconstitutional to make the right of the pre-nationalisation owners to enter into possession dependent on the fulfilment of an obligation of a third party, the State.

An amendment introduced in June 1996 (paragraph 3 of the supplementary provisions to the Restitution Law, State Gazette no. 51/96, "the June 1996 amendment") was in force until January 2000.

It provided that persons who had been ordered to vacate their apartments under section 7 were to be paid by the State the price of the property, adjusted to reflect the market price as of the date of the eviction. Also, until this payment was effected, they were entitled to rent temporarily State owned apartments, or to receive a rent allowance, if they had insufficient means to pay market rental prices. The above obligations of the State were to be governed by regulations to be issued by the Council of Ministers.

4. The decision of the former European Commission of Human Rights in the case of Panikian v. Bulgaria (no. 29583/96) of 10 July 1997

Examining an application alleging, *inter alia*, a violation of Article 1 of Protocol No. 1 to the Convention in the case of three persons who had lost their apartment pursuant to a judgment under section 7 of the Restitution Law, the former Commission decided as follows:

> "The Commission considers that the applicants had a 'possession' within the meaning of Article 1 of Protocol No. 1 to the Convention even if their title was null and void *ab initio*. Thus, for about 35 years they possessed the apartment in question and were considered owners for all legal purposes. Moreover, it would be unreasonable to accept that a State may enact legislation which allows nullification *ab initio* of contracts or other titles to property and thus escape the responsibility for an interference with property rights under the Convention...
>
> Insofar as the applicants contend that the courts decided wrongly, the Commission recalls that in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties to the Convention. In particular, it is not competent to deal with an application alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention...
>
> The essence of the applicants' complaints is rather in their criticism of section 7 of the Restitution Law, of the manner in which it was applied, and of the alleged injustice resulting therefrom. The Commission considers that this complaint should be examined in the light of the first sentence of the first paragraph of Article 1 of Protocol No. 1 to the Convention... [T]he Commission must determine whether a fair balance was struck between the general interest of the community and the requirements of the protection of the individual's fundamental rights...
>
> In matters under Article 1 of Protocol No. 1 States enjoy a certain margin of appreciation. Where the legislature has made a choice by enacting laws, which it considered in the general interest, the possible existence of alternative solutions does not in itself render the contested legislation unjustified. Provided that the authorities remain within the bounds of their margin of appreciation, it is not for the Convention organs to say whether the legislation represented the best solution...

In the present case the applicants' title to their apartment derived from a transaction, concluded in 1959, which was found to have been in breach of certain provisions of the law then in force. However, its lawfulness was not challenged at the time, in 1959 and in the following years. Also, it appears that at the time only the municipality (the seller) and the State had *locus standi* to bring an action to declare the contract null and void. Years later, in February 1992 the Parliament decided to introduce a new possibility for contesting the lawfulness of such transactions, by giving *locus standi* to third persons, the pre-nationalisation owners. Mr. S., the pre-nationalisation owner of the applicants' apartment, seized this opportunity and challenged the applicants' title, which had been practically stable for the past 33 years. The courts, upon his action, reviewed the lawfulness of the 1959 transaction and declared it null and void.

In examining whether the interference with the applicants' rights under Article 1 of Protocol No. 1 to the Convention, resulting from the above legislation and its implementation in the case, was justified, the Commission attaches special importance to the very particular circumstances which formed the background of the Restitution Law. That Law was apparently adopted with the aim to make good injustice dating back decades in the past and inherited from the communist rule in Bulgaria. Also, it had a strictly transitional character, the possibility to bring an action under section 7 having been limited to only one year, which expired in February 1993.

The Commission further notes that according to the law in force since June 1996 the applicants can claim from the State the price of the apartment, adjusted to reflect its market value as of the date of the eviction. Moreover, they are entitled to a rent allowance for the period of time between the eviction and the receipt of the amount due in respect of the price of the apartment.

In these circumstances the Commission does not consider that the Bulgarian authorities acted beyond [their] margin of appreciation ... It follows that the complaint under Article 1 of Protocol No. 1 to the Convention is manifestly ill-founded ..."

5. Relevant legislative and practical changes since the Commission's decision; current situation

a) as regards compensation and rent allowances

The Council of Ministers did not adopt the regulations necessary to put in practice the June 1996 amendment to the Restitution Law.

In November 1997 a new law, the Law on Compensation for Owners of Nationalised Real Property ("the Compensation Law") - whose main purpose was providing compensation for nationalised property that could not be returned physically - introduced a provision (section 5 § 3) which stated that persons who had lost their dwellings pursuant to section 7 of the Restitution Law should "receive housing compensation bonds, if they [had] not received the indemnity provided for in [the June 1996 amendment]".

Since the June 1996 amendment to the Restitution Law, which provided for a right to a market-value cash indemnity, remained in force until January 2000, it appears that in the period between November 1997 and January 2000 persons in the applicants' position did not apply for bonds.

The regulations required to put in practice the June 1996 amendment were never enacted. Thus, former owners who lost their apartments in cases under section 7 of the Restitution Law did not receive pecuniary market-value compensation or any rent allowance.

As regards renting municipal apartments at fixed rates, in a large number of cases the requests made were unsuccessful because of lack of available municipal dwellings or because the competent authorities interpreted the relevant law as allowing discretion and refused the requests. In some cases, however, the evicted post-nationalisation owners were able to rent municipal apartments at fixed rates.

In January 2000, the June 1996 amendment was repealed. The bill repealing the amendment was introduced in Parliament with the explanation that the State did not have the resources necessary to pay in cash.

The former owners are currently entitled to receive housing compensation bonds under section 5 § 3 of the Compensation Law.

The January 2000 law established a time-limit for requests for compensation bonds: three months after the entry into force of that law or, as regards pending proceedings under section 7, two months after the final judgment.

The requests are examined by the competent ministry or regional governor. If the request is approved, an expert has to assess the market value of the property. The expert's assessment must be approved by the competent ministry or governor and the amount of compensation bonds to be issued must be fixed. The face value of the bonds to be issued is equal to the full market value of the dwelling. These decisions are subject to appeal before the Supreme Administrative Court.

Compensation bonds are not exchangeable for cash. No interest accrues. They can be used for participation in privatisation tenders.

In accordance with section 5 § 2 of the Compensation Law, as in force between November 1997 and November 2004, housing compensation bonds could also be used to purchase, “with priority”, State or municipal dwellings.

Municipalities had no interest in parting with their real property in exchange of compensation bonds and prefer to sell for cash. Some municipalities adopted rules according to which not more than 20 or 30% of the price of a dwelling could be paid by compensation bonds. The Supreme Administrative Court, when examining an appeal against a refusal of a mayor to sell an apartment for bonds, held that persons who had lost cases under section 7 did not have a right to buy an apartment, the matter being within the discretion of the municipality (опр. 2571/17.04.2001 по адм. д. 2065/01, ВАС-III, see application no. 194/02, Nikolov and Nikolova v. Bulgaria).

In November 2004, by virtue of an amendment to section 41 of the Municipal Property Act, the sale of apartments for bonds was prohibited.

A secondary market for compensation bonds developed in Bulgaria after 1997. Until December 2004, at different times they were traded at between 15 and 25 % of their face value, depending on the number and type of State enterprises offered for privatisation.

In the beginning of December 2004, there was a sudden surge in the price of compensation bonds at the secondary stock market. Within several weeks, in December 2004 they reached 100 % and more of face value. In the end of January 2005 housing bond prices fell again and later stabilised at around 70 % of their face value.

It is not open to a person in the applicants' situation to seek damages from the State for the difference between the market value of the apartment and the sum obtained on the market by selling the bonds received in compensation for the apartment, irrespective of whether or not the relevant acquisitive transaction had been declared null and void owing to alleged unlawful acts on the part of a municipality. According to the Supreme Court of Cassation, Parliament has provided for a compensation scheme based on a "presumption that the compensation was of the same value [as the apartment]". That was sufficient to satisfy the constitutional principle of protection of property. The actual value obtained on the bond market by the individual concerned was irrelevant and the State could not be held responsible for any difference between that value and the value of the apartment (реш. 1893 от 1.12.2004 по гр.д. 1518/2003 на ВКС).

b) as regards the transitory nature of section 7

In 1997 former pre-nationalisation owners who had missed the initial one-year period under section 7 of the Restitution Law for bringing an action against post-nationalisation owners were given a second chance through a legislative amendment renewing the one-year time-limit.

On 11 March 1998 the Constitutional Court declared that renewal unconstitutional and struck down the provision that introduced it as it encroached on the principle of protection of property and legal certainty (реш. 4 от 11.3.1998 по к.д. 16/97).

Nevertheless, as the judgments of the Constitutional Court have no retroactive effect, the courts, in accordance with their established practice, were bound to examine claims under section 7 of the Restitution Law brought in the interval between the entry into force of the 1997 law renewing the time-limit and the 1998 Constitutional Court's judgment quashing that law (опр. 1280, 22.10.1998 по гр.д. 1539/98 г., ВКС-IV).

Despite the time-limit under section 7, it appears that it may be open to pre-nationalisation owners without limitation in time to bring an action against post-nationalisation owners by reference to the general provisions of civil law concerning nullity of transactions, combined with section 1 of the Restitution Law (реш. N: 2109, 25.1.99 г. по гр. д. N: 1754/97 г., ВКС-IV;

see application no. 48380/99, Todorova v. Bulgaria; but see, *a contrario* реш. N: 1623, 10.3.94 г. по гр. д. N: 186/93 г., ВКС-IV).

c) other consequences of the relevant legislation and practice

In accordance with interpretative decision No. 1 of 1995 of the Supreme Court, persons who lost cases under section 7 of the Restitution Law are not entitled to claim compensation for improvements they had made in the property. To reach that conclusion and thus establish an exception from the general rule, the Supreme Court referred to the fact that the aim of the Restitution Law had been to give back to their owners property confiscated without compensation. Justice required that they should not bear the burden to pay for improvements and maintenance expenses. Also, section 8 § 1 of the Restitution Law provided that persons who had obtained restitution of their nationalised property could not claim compensation for the fact that their property had been used by others after the nationalisation. It followed that the post-nationalisation owners whose titles had been nullified under section 7 should not be entitled to compensation for maintenance expenses and improvements in the property.

COMPLAINTS

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.

The applicants complained under Article 6 of the Convention that the proceedings had been unfair and excessively lengthy.

THE LAW

1. 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 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 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 complained under Article 6 of the Convention that the proceedings had been unfair and excessively lengthy. Article 6 § 1 of the Convention reads, as relevant:

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

As regards the alleged excessive length of the proceedings in the applicants' case, the Court observes that they lasted approximately four years and eight months (February 1993 – October 1997) and went through three levels of jurisdiction. The case was of some factual complexity as it related to events dating decades ago. The applicants have not substantiated details about any significant period of inactivity imputable to the authorities. In these circumstances, having regard to the criteria established in its case-law, the Court considers that the complaint under Article 6 § 1 of the Convention as regards the length of the proceedings is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

The remainder of the applicants' complaints under Article 6 of the Convention is unsubstantiated and therefore also manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention.

This part of the application must therefore be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicants' complaint that there had been a violation of their right to peaceful enjoyment of their property.

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President