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. 45437/99
by Nadejda WULPE
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 December 1998,

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 Nadejda Wulpe, is a Bulgarian national, who was born in 1929 and lives in Sofia. Before the Court she was represented by Mrs S. Marguaritova-Voutchkova, a legal adviser 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. Particular circumstances of the applicant's case

By virtue of section 7 of the Restitution Law and through judicial decisions of 1995, 1996 and 1997 the applicant's title to her apartment (which had been rented by her family since 1969 and had been purchased from the local municipality in 1982) was declared null and void. Ownership thereof was bestowed back to the heirs of the persons from whom the apartment had been nationalised in 1949.

In 1969 the applicant's husband, who was at that time the director of the symphony orchestra in the town of Burgas, was granted the tenancy of a three-room, 95-square-metres state-owned apartment. The applicant's family moved in. The applicant had two daughters.

In 1982 the applicant, who had divorced and had obtained the tenancy of the apartment, purchased it and reimbursed the price within the following years.

In 1993 the heirs of the pre-nationalisation owners of the apartment, which had been nationalised in 1949 without compensation, brought an action against the applicant under section 7 of the Restitution Law.

By judgment of 24 March 1995 the Burgas District Court declared the 1982 purchase null and void. The court noted that the tenancy of the apartment had been obtained in 1969 in breach of the law as according to the applicable rules a four-member family - as the applicant's - had only been entitled to a two-room apartment. Furthermore, the judicial decision in the applicant's divorce proceedings had granted the tenancy to the applicant in breach of the law as the apartment had largely exceeded her and her two daughters' needs. In any event, at that time the applicant should have been treated as a “one-member” family, her daughters having moved to Sofia. Moreover, at the moment of the 1982 transaction the applicant had not yet been a resident of Burgas (which was a pre-condition to buy an apartment there); and, since her daughters had attained majority, they could not be counted as members of the family to justify a right to buy a three-room apartment. Finally, the 1982 sale-purchase contract had not been signed by the mayor personally.

The applicant appealed. She submitted a certificate stating that, being a music teacher, she had been entitled to an additional room for a study. The appeal was dismissed in January 1996 by the Burgas Regional Court which provided succinct reasoning.

On 3 October 1996 the restored owners invited the applicant to leave.

On 17 September 1997 the applicant's petition for review (cassation) was dismissed by the Supreme Court of Cassation. The court upheld the conclusions of the District Court and stated that each of the breaches of the law found by that court had been sufficient to warrant a finding that the applicant's title was void.

On 2 October 1997 the applicant wrote to the mayor requesting market-value compensation in accordance with the June 1996 amendment of the Restitution Law. She received a reply by the regional governor explaining that such compensation would only be payable after the adoption by the Council of Ministers of regulations on the implementation of the June 1996 amendment.

On 20 May 1998 the Burgas Regional Court ordered the applicant to vacate the apartment and to pay to the restored owners damages for having continued to use the apartment since the judgments declaring her title void. The court rejected the applicant's argument that she should not be required to leave until receipt of the market-value compensation provided for by the June 1996 amendment. The court found that her right to compensation from the State could not be invoked against the restored owners who were entitled to enter into possession of their property.

On an unspecified date the restored owners took possession of the apartment. At that time the applicant was living in Sofia with her daughter.

Following several unsuccessful applications of 1997 and 1998, on 30 September 1999 the applicant was granted the tenancy of a one-room municipal apartment in Burgas which, however, was allegedly in a dire state.

On 21 March 2000 the applicant filed a request with the regional governor for compensation through bonds.

On 11 October 2000 the regional governor issued a decision recognising the applicant's right to compensation bonds. On 12 June 2001 the governor appointed an expert to assess the value of the apartment. The expert filed his report on 22 June 2001.

On 4 July 2001 the governor approved the expert's report and ordered the issuance of compensation bonds with face value 39,600 Bulgarian levs (“BGN”) (the equivalent of approximately EUR 20,000).

On 18 July 2001 the applicant appealed, stating that the expert had not included in his assessment the price of the right to build over State land and that the price per square metre applied had been lower than the amount determined by another expert for another apartment in the same building.

The appeal was dismissed on 5 February 2002 by the Bourgas Regional Court. The court appointed another expert who arrived at the same figure as the expert appointed by the regional governor. The court concluded that the method of calculation used by the two experts had been in conformity with the law. The applicant's ensuing cassation appeal was dismissed on 19 November 2002 by the Supreme Administrative Court on grounds that the experts' assessment had been made in accordance with the relevant rules.

On 2 January 2003 the applicant applied to receive the compensation bonds issued pursuant to the governor's order of 4 July 2001. She received them on 21 April 2003.

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 under Article 1 of Protocol No. 1 to the Convention that the failure of the State to pay the market value of her apartment under the June 1996 amendment upset the fair balance required by that provision, placing a disproportionate burden on her, although she had not been responsible for any wrongdoing. She also complained under Article 13 of the Convention that she did not have an effective remedy and under Article 14 of the Convention that the State had favoured pre-nationalisation owners and discriminated against post-nationalisation owners.

On 3 October 2003, in her submissions in reply to the Government's observations the applicant submitted an additional complaint under Article 6 of the Convention, alleging unfairness and arbitrariness in the proceedings concerning the amount of compensation bonds she had been awarded.

THE LAW

1. The applicant complains, relying on Article 1 of Protocol No. 1 to the Convention taken alone and in conjunction with Articles 13 and 14, that she was the victim of an arbitrary deprivation of property without adequate compensation. The relevant provisions of the Convention read:

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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

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 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.

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 applicant 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 applicant's 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 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 stated that she did not wish to call into question the entire restitution process in Bulgaria since 1989 but complained of concrete deprivations of property.

The applicant submitted that she had enjoyed many years of undisturbed possession, paid property tax and maintained and improved an apartment

which she had bought from the State. She had never had any reason to doubt the lawfulness of the transaction and had been its owner 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 applicant 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 applicant further maintained that 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 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 applicant's 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 applicant's 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 her property rights the applicant stated that there was a clear imbalance in that she was 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 applicant stressed that that constituted a retroactive deprivation of possessions, as she had already acquired pecuniary claims to full compensation in cash.

The applicant 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 applicant was not entitled to compensation for the improvements she had made in the property and owed damages for having used her own apartment after 1992.

The applicant 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 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 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 she could only obtain in compensation a portion of the value of her property, without compensation for the improvements she had made or for the moral suffering she 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. On 3 October 2003 the applicant raised an additional complaint, alleging that the proceedings concerning her compensation bonds were unfair and that the courts decided arbitrarily.

The Court notes that this complaint was introduced on 3 October 2003, more than six months following the final judgment of the Supreme Administrative Court of 19 November 2002. It follows that this complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints under Article 1 of Protocol No. 1 to the Convention, taken alone and in conjunction with Articles 13 and 14 that she was the victim of an unjustified infringement of her property rights;

Declares inadmissible the remainder of the application.

Søren NIELSEN
Registrar

Christos ROZAKIS
President