COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIFTH SECTION

CASE OF MASLENKOVI v. BULGARIA

(Application no. 50954/99)

JUDGMENT

STRASBOURG

8 November 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Maslenkovi v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. LORENZEN, *President,*
Mrs S. BOTOUCHAROVA,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER,
Mr M. VILLIGER, *judges,*
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 9 October 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 50954/99) against the Republic of Bulgaria lodged with the Court on 27 July 1999 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by four Bulgarian nationals, Mr Kiril Zahariev Maslenkov (born in 1926), his wife, Mrs Elena Nikolova Maslenkova (born in 1927), their son, Mr Zahari Kirilov Maslenkov (born in 1949) and the latter's wife, Mrs Elena Krumova Maslenkova (born in 1951) ("the applicants").

2. The applicants were represented by Mrs N. Sedefova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Mrs M. Karadjova, of the Ministry of Justice.

3. The applicants alleged, in particular, that they had been deprived of their property in violation of Article 1 of Protocol No. 1 to the Convention and that the civil proceedings in their case were excessively lengthy in breach of Article 6 § 1.

4. By a decision of 31 March 2005, the Court declared the application admissible.

5. The applicants and the Government each filed written observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. At the relevant time the first applicant was Chief of Staff of the Ministry of the Interior. He owned an apartment together with his wife until 1980, when they donated it to their son. Thereafter, the first two applicants lived as tenants in a State-owned apartment.

7. On 27 November 1985, the first applicant was granted the tenancy of another State-owned apartment which belonged to the housing fund of the Ministry of the Interior. The apartment had four rooms and covered 132 square metres.

8. On 15 January 1986 the first and the second applicants purchased the apartment from the Ministry. For the purposes of the transaction, the first applicant submitted declarations stating that he lived with his wife, their granddaughter and the second applicant's mother.

9. On 27 January 1992 the first and second applicants transferred the apartment to their son's family (the third and fourth applicants).

10. On 3 June 1992 the Ministry of the Interior brought a *rei vindcatio* action against the applicants claiming that the 1986 transaction was null and void as being contrary to the relevant provisions on the sale of housing.

11. On 7 October 1992 the Sofia District Court held its first hearing in the case. Noting deficiencies in the claim, the court instructed the plaintiff, the Ministry of the Interior, to amend it.

12. The Ministry did not comply with that instruction until April 1993, which caused the adjournment of the hearings listed for 2 December 1992 and 4 March 1993.

13. The examination of the case thus began on 7 July 1993. Although the fourth applicant had not been properly summoned, her lawyer gave his consent for the hearing to proceed.

14. The hearing listed for 3 November 1993 was adjourned, as the Ministry of Finance, whose participation was mandatory in such cases, had not been summoned.

15. At a hearing held on 2 February 1994 the Ministry of the Interior requested an adjournment to enable them to submit documents pertaining to the 1986 sale.

16. The hearing was resumed on 14 April 1994. The plaintiff introduced an amendment to the claim and sought an order requiring the first two applicants to appear personally and reply to questions regarding their housing situation at the time they had obtained the apartment in question. The court issued that order and adjourned the hearing.

17. On 1 June 1994 the first applicant could not be questioned as he had been taken ill. On 8 July 1994 he was questioned by another judge in the town where he was undergoing medical treatment.

18. The Sofia District Court resumed the examination of the case on 20 September 1994, when the parties made their final submissions. The court reserved judgment.

19. By a judgment of 4 November 1995 the District Court found, *inter alia*, that the apartment at issue had been larger than permitted by law for a family like that of the first and second applicants. The relevant rules provided that the term "family" could only include the spouses, their minor children and the spouses' parents, if they lived together. At the relevant time, however, the children of the first and the second applicants had reached the age of majority. Their granddaughter could not be considered as a member of the family for the purposes of the housing regulations. Also, it was unclear whether the second applicant's mother had actually lived with the first and second applicants. In these circumstances the family had had two members and had only been entitled to one room. It followed that the 1986 sale-purchase transaction was null and void. As a result, the first and second applicants had never become owners and could not have validly transferred their title to the third and fourth applicants. The court granted the Ministry's *rei vindicatio* claim.

20. On 30 November 1995 the applicants appealed to the Sofia City Court. On 15 February, 18 April, 10 June, 14 October and 5 December 1996 the hearing could not proceed as the Ministry of the Interior had not been properly summoned. That was due to the fact that the summons receipts had not been filled out properly. The appeal was eventually heard on 27 February 1997.

21. By a judgment of 19 June 1997 the Sofia City Court quashed the lower court's judgment and dismissed the claims of the Ministry of the Interior. It found, *inter alia*, that while it was true that the first and second applicants had obtained an apartment exceeding their housing needs and thus in violation of the relevant regulations, that fact did not entail nullity *ab initio* of the sale contract.

22. On 8 August 1997 the Ministry of the Interior submitted a petition for review (cassation) to the Supreme Court, which later became the Supreme Court of Cassation. A hearing was held on 18 November 1998.

23. On 2 February 1999 the Supreme Court of Cassation quashed the Sofia City Court's judgment and upheld the Sofia District Court's judgment, thus granting the *rei vindicatio* claim. The court held that the provisions regulating the size of apartments on the basis of housing needs, as in force at the relevant time, had established strict rules whose violation entailed nullity *ab initio*.

II. RELEVANT DOMESTIC LAW

24. In accordance with section 34 of the Law on Obligations and Contracts, each party to a void contract can recover from the other party the sums paid or the property transferred under the contract.

25. The rules of acquisitive prescription and adverse possession under Bulgarian property law provide that a person holding in possession real estate under a defective title may become its owner after five years of undisturbed possession in cases of *bona fidae* possession and after ten years in all other cases (section 79 of the Property Act).

26. At the relevant time section 86 of the Property Act provided that State property cannot be acquired through adverse possession. As of 1996 that rule only applies in respect of certain categories of State property.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

27. The applicants complained under Article 1 of Protocol No. 1 to the Convention that they had been deprived of their apartment pursuant to legal provisions which lacked sufficient clarity and had been applied selectively and arbitrarily.

28. Article 1 of Protocol No. 1 reads as follows:

> "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."

A. The parties' submissions

29. They applicants stated, *inter alia*, that they had not been responsible for the administrative omissions that had led to the annulment of the 1986 transaction. In their submission, it was well known that omissions on the part of State organs had occurred in numerous real-estate transactions in the recent past. Nevertheless, only selected cases had been pursued, which amounted to arbitrariness. The applicants considered that the provisions of

Bulgarian law according to which State property could not be acquired by prescription, combined with the broad interpretation of the concept of nullity *ab initio* applied by the courts in their case, made it possible for the State to recover arbitrarily property sold to individuals at any time and in any case. The applicants also stated that they had not sought recovery of the price of the apartment since, owing to inflation and the devaluation of the Bulgarian currency, they were bound to receive an amount tens of times lower than the value of the apartment.

30. The Government stated that the applicants had acquired an apartment in violation of the law. The relevant provisions of civil law had been clear and predictable – they provided that transactions in breach of the law were null and void. The Government further rejected the applicants' allegation that they had been the victims of a selective attack. Following the democratic changes in 1989, the reformed State institutions had carried out revisions of recent transactions and sought to recover property acquired unlawfully. The aim pursued had been clearly legitimate. Finally, the Government submitted that nullity was the only appropriate sanction for transactions that violated the law and that therefore the interference with the applicants' possessions could not be regarded as disproportionate.

B. The Court's assessment

31. Noting that the applicants were considered for all legal purposes as the owners of the apartment at issue (see paragraphs 8 and 9 above), the Court considers that the judgments declaring their title null and void and ordering them to vacate the premises constituted an interference with their right to peaceful enjoyment of their possessions, within the meaning of Article 1 of Protocol No. 1 to the Convention. Such interference must be lawful, in the public interest and must strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

32. The Court considers that the interference was provided for by law and pursued a legitimate aim. In particular, the impugned judicial decisions did nothing more than enforce binding legal rules on the sale of State housing, in application of the relevant rules of civil law and law of contracts (see paragraphs 19-23 above). The Court is not convinced by the applicants' arguments as regards the alleged arbitrariness, selective approach and lack of foreseeability of the relevant law.

33. The Court further observes that the former European Commission of Human Rights examined and rejected as being manifestly ill-founded a similar complaint against Bulgaria (see *Kaneva v. Bulgaria*, no. 26530/95, Commission decision of 27 February 1997).

34. More recently, the Court examined a group of cases against Bulgaria brought by persons whose real-estate titles acquired during the communist

period had been declared null and void in the 1990s following the fall of the communist regime (see *Velikovi and Others v. Bulgaria*, nos. 43278/98 et al., 15 March 2007). Without overlooking the differences between *Velikovi and Others* (which concerned the application of special legislation on the restitution of nationalised property) and the present case, the Court, as in *Velikovi and Others*, attaches significant weight to the fact that the first two applicants had acquired the apartment at issue in material breach of substantive provisions of the relevant regulations – the apartment had largely exceeded in size the limits imposed by law at the relevant time for a family like that of the first two applicants (see paragraphs 7, 8 and 19-23 above). It cannot be maintained that at the relevant time the first two applicants had been unaware that the transaction violated the law, whose aim had been the just distribution of State housing.

35. The Court considers that in such circumstances a decision declaring null and void a contract which contravened the regulations for the sale of State housing is in principle a legitimate and proportionate measure for their enforcement.

36. Furthermore, the period of eight years that elapsed in the present case between the date of the defective transaction and the moment it was challenged in court was not excessively lengthy and cannot be seen as giving rise to an issue with regard to the principle of legal certainty. In particular, that period was shorter than the ten-year period of acquisitive prescription under Bulgarian law (see paragraphs 8, 9 and 25 above).

37. In so far as the applicants complained that they would only receive a token amount if they claimed restitution of the price they had paid in 1986, the Court notes that under the relevant law the applicants were entitled to recover in full the amount they had paid for the apartment (see paragraph 25 above). Independently of the authorities' control, however, in the 1990s that amount lost its value, owing to inflation and the depreciation of the Bulgarian currency. The loss suffered by them was therefore the product of inflation and the depreciation of the Bulgarian currency over the relevant period. The Court will examine below the applicants' claim that the proceedings were excessively lengthy, at a time of rampant inflation (see, *Kovacheva and Hadjiilieva v. Bulgaria*, no. 57641/00, § 34, 29 March 2007). However, for the purposes of the applicants' complaint under Article 1 of Protocol No. 1 concerning the judicial decisions declaring their title null and void, the Court does not consider that inflation and the depreciation of the Bulgarian currency during the 1990s give rise to an issue under that provision. It reiterates that Article 1 of Protocol No. 1 does not impose on States the obligation to maintain low inflation or the purchasing power of the national currency (see *Danilyuk v. Ukraine* (dec.), no. 5326/02, 19 May 2005).

38. In sum, the Court does not consider that the interference with the applicants' rights under Article 1 of Protocol No. 1 to the Convention was

unlawful or arbitrary as alleged by the applicants or that it imposed an excessive burden, having regard to the circumstances of the case. It follows that there has been no violation of that provision.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

39. The applicants complained under Article 6 § 1 about the length of the civil proceedings in their case. Article 6 § 1 reads, in so far as relevant:

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

40. The period to be taken into consideration began only on 7 September 1992, the date of the Convention's entry into force for Bulgaria, and ended on 2 February 1999, when the Supreme Court of Cassation delivered its final judgment in the case (see paragraph 10 and 23 above). It thus lasted six years and five months for three levels of jurisdiction.

41. The Court must also have regard to the fact that as of the date of the Convention's entry into force for Bulgaria the proceedings had been pending for three months (see paragraph 10 above).

42. The reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicants and the relevant authorities and what was at stake for the applicants in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

43. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above, and – for a detailed analysis of the relevant issues in a recent case concerning Bulgaria – *Vatevi v. Bulgaria*, no. 55956/00, 28 September 2006).

44. Having examined all the material submitted to it and having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. In reaching this conclusion, the Court takes into account the fact that significant delays were imputable to the authorities. In particular, procedural omissions on the part of the Ministry of the Interior, the plaintiff in the proceedings, were at the origin of delays of not less than ten months (see paragraphs 11-13 and 15 above). Also, the judicial authorities were responsible for delays totalling more than two years as a result of defective summons (see paragraphs 14 and 20 above) and periods of inactivity (see paragraph 22 above). While the case had a certain factual complexity, that fact does not justify the delays mentioned above. Also, the Court considers that the applicants were not responsible for any significant delay.

There has accordingly been a breach of Article 6 § 1.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

45. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

46. The applicants made a global claim in respect of pecuniary and non-pecuniary damage related to all the alleged violations of the Convention in their case. Under the head of pecuniary damage they claimed the market value of the apartment, which in their view had been taken away from them arbitrarily. An expert had assessed that value at 95,612 euros (EUR). In respect of non-pecuniary damage, they stated that they had lived for many years in uncertainty which had caused anxiety and adversely affected their health. The applicants left to the Court to determine the amount to be paid in respect of non-pecuniary damage.

47. The Government stated, *inter alia*, that the claim in respect of pecuniary damage was unfounded and in any event excessive and that the applicants' allegations about a link between the events at issue and their health were speculative.

48. The Court considers that there is no causal link between the violation of Article 6 § 1 found in the present case and the fact that the applicants lost their apartment. The claim for pecuniary damage is therefore dismissed.

49. The Court considers however that the applicants must have suffered distress on account of the excessive length of the proceedings. As the delays in the proceedings occurred during a period of high inflation, the applicants' anxiety must have been exacerbated by them witnessing how those delays contributed to the loss of value of their potential claim to obtain restitution of the price paid for the apartment (cf., *Kovacheva and Hadjiilieva,* cited above, § 42). Taking into account those considerations, the Court awards EUR 1,500 in respect of non-pecuniary damage.

B. Costs and expenses

50. The applicants claimed EUR 3,000 for the legal fees of their representative, who had charged them that amount for sixty hours spent on the case. The applicants submitted a legal fees agreement. They also claimed EUR 210 in respect of translation costs, remuneration of the expert

who assessed the value of the apartment and postal expenses. The Government stated that the claim was excessive.

51. Noting that the applicants' main complaint under Article 1 of Protocol No. 1 was rejected, the Court considers it appropriate to award EUR 600 in respect of costs and expenses.

C. Default interest

52. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;

2. *Holds* that there has been a violation of Article 6 of the Convention (length);

3. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 1,500 (one thousand five hundred euros) in respect of non-pecuniary damage;
      (ii) EUR 600 (six hundred euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 8 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President