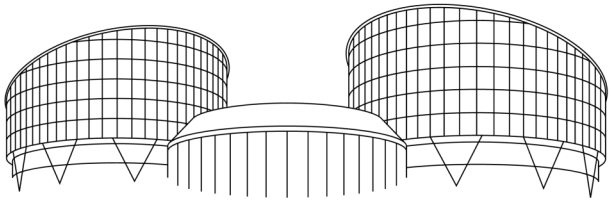

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

# CASE OF POPNIKOLOV v. BULGARIA

*(Application no. 30388/02)*

JUDGMENT
(merits)

STRASBOURG

25 March 2010

*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 Popnikolov v. Bulgaria,**

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

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Mark Villiger,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*
and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 2 March 2010,

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

# PROCEDURE

1. The case originated in an application (no. 30388/02) against the Republic of Bulgaria lodged with the Court on 2 February 2002 under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Dimitar Nikolov Popnikolov ("the applicant"), who was born in 1955 and lives in Varna. The applicant complained both in his personal capacity and as Sole Trader "DINIPO-666-Dimitar Nikolov Popnikolov" (the "sole trader") which he registered in 1992 in Varna.

2. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged in particular that the authorities had failed to comply with a final court judgment in his favour and had deprived him of a legitimate expectation of acquiring a State-owned property.

4. On 20 September 2007 the Court decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

### A. Renting of the property

5. On 1 October 1992 the applicant, acting as sole trader, entered into a contract with the State-owned company SIME ECO ("the company") under which he leased part of its real estate – a production facility and fittings ("the property") – for ten years.

6. The rental contract stipulated, *inter alia*, that if the company terminated the lease prematurely then it would compensate the lessee for any improvements to the property.

### B. Proposal under section 35(1)(2) of the Privatisation Act.

7. On 11 October 1994 the applicant submitted a proposal to the Ministry of Industry to purchase the property under the preferential privatisation procedure for lessees of State-owned properties or parts thereof provided for in section 35(1)(2) of the Privatisation Act.

8. In a letter of 26 April 1995 the Minister of Industry rejected the applicant's proposal. On an unspecified date the latter appealed against the decision.

9. In a final judgment of 4 December 1996 the Supreme Court found in favour of the applicant, quashed the decision of the Minister of Industry as unlawful, and, finding that he fulfilled the statutory conditions to purchase the property under the preferential privatisation procedure, explicitly instructed the Minister of Industry to adopt the required decision in order to sell him the property under section 35(1)(2) of the Privatisation Act. In particular, the court stated as follows:

> "Thus, it should be accepted, in view of the outlined considerations, that the refusal made by the Minister of Industry to allow the purchase of the disputed property under the procedure of section 35(1)(2) of the [Privatisation Act] is unlawful and must therefore be quashed and ... the file remitted to the [competent] body under section 3 of the [Privatisation Act] for the matter to be decided in conformity with instructions given by the court above, in particular for an order to be issued for the privatisation of the property under the procedure of section 35(1)(2) of the [Privatisation Act]."

10. The Minister of Industry did not issue an order for the applicant to purchase the property under the procedure of section 35(1)(2) of the Privatisation Act.

## C. Mass privatisation programme

11. On 19 December 1995 the National Assembly adopted a programme for mass privatisation (the "privatisation programme") which provided that ninety per cent of the company's shares would be privatised. On 24 September 1996 the Tender Commission promulgated a list of companies whose shares would be sold in the first tender of the said programme. It included the company.

12. On an unspecified date, the privatisation of the majority stockholding of the company was performed, together with the property as an asset. It is unclear whether this took place before or after the Supreme Court's judgment of 4 December 1996.

13. Thereafter, the company had three private shareholders and the State, which retained a ten per cent stockholding.

## D. Proceedings against the State authorities

14. In 1997 the applicant, in his capacity of sole trader, initiated a civil action against the company, the Council of Ministers and the Ministry of Industry. He sought to have the privatisation contract of the company declared partially null and void, to the extent that it related to the property, on the basis of the Supreme Court's judgment of 4 December 1996 in his favour. In a final judgment of 21 August 2001 the Supreme Court of Cassation rejected the applicant's claim, as it found that no privatisation contract had been executed between the respondent parties in implementation of the results of the first tender of the privatisation programme, and therefore that there was no act whose validity could be challenged in the context of the initiated civil proceedings. In its reasoning the court inferred that the applicant should have challenged the authorities' decisions to include the company in the privatisation programme and the other administrative acts issued in that regard.

15. In the meantime, in 1998 the applicant, in his capacity as sole trader, had also initiated an administrative action against the Ministry of Industry in which he sought to have declared partially null and void, to the extent that it related to the property, (1) the decision of the Minister of Industry to include the company in the privatisation programme and (2) the privatisation contract for the sale of the company. In a final decision of 5 October 2000 the extended panel of the Supreme Administrative Court rejected the applicant's claim and found that neither of the acts constituted administrative acts which could be challenged in the context of administrative proceedings.

16. On 12 November 2001 the applicant sought the assistance of the Prime Minister and the Chief Public Prosecutor's Office to obtain enforcement of the Supreme Court's judgment of 4 December 1996. In a letter of 5 December 2001 the Ministry of Economy informed the applicant that it could not assist him, because by that time the State owned only 0.2 % of the share capital of the company and could not force the sale of the property to the applicant. Thus, the only way that he could obtain enforcement would be to seek to purchase the property directly from the company.

### E. Proceedings against the company

17. On an unspecified date the applicant, in his capacity of sole trader, initiated proceedings against the company seeking to be compensated for the improvements he had made to the property.

18. In a judgment of 5 April 2004 the Varna Regional Court found partly in favour of the applicant. It recognised that in 1992 he had made improvements to the property in the amount of 200,352 old Bulgarian levs (BGL, approximately 12,637 German marks at the time), and, in view of the redenomination of the local currency of 4 July 1999, awarded him the current day equivalent of 200.35 new Bulgarian levs (BGN, approximately 102 euros (EUR)).

19. On appeal, the Supreme Court of Cassation upheld the judgment of the lower court in a final judgment of 28 March 2005.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

20. The Transformation and Privatisation of State and Municipally-Owned Enterprises Act (*Закон за преобразуване и приватизация на държавни и общински предприятия*: "the Privatisation Act"), adopted in 1992, provided for the transformation of public property and the privatisation of State and municipally-owned enterprises. In March 2002 it was superseded by other legislation.

21. Section 3 of the Act indicated the bodies competent to take decisions for privatisation. In the present case that body was the Minister of Industry.

22. Section 35(1) of the Privatisation Act provided that lessees of State and municipally-owned property could propose to buy the properties rented by them, without a public auction or competition and for a price equal to the property's valuation prepared by certified experts in accordance with rules adopted by the Government. Those preferential conditions were applicable to lessees of State and municipally-owned property who had concluded lease contracts before 15 October 1993 and where the said contracts were still in force on the date of the respective privatisation proposal.

23. Section 35(2) of the Privatisation Act, as worded after October 1997, provided that where a refusal by the competent administrative body to initiate a privatisation procedure following a proposal by the interested party had been quashed by means of a final court judgment, the relevant administrative body was obliged, within two months of the judgment becoming final, to initiate a privatisation procedure, prepare the privatisation of the property at issue and offer to sell the property to the entitled party.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

24. The applicant complained that the authorities had failed to comply with the Supreme Court's judgment of 4 December 1996 recognising his right to purchase the property under the preferential privatisation procedure of section 35(1)(2) of the Privatisation Act, as provided in Article 6 of the Convention, which reads as follows:

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

25. The Government did not submit observations.

### A. Admissibility

26. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

### B. Merits

27. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal; in this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by a court must therefore be regarded as an integral part of the "trial" for the purposes of

Article 6 of the Convention (see *Hornsby v. Greece*, judgment of 19 March 1997, *Reports of Judgments and Decisions* 1997-II, p. 510, § 40, and *Burdov v. Russia (no. 2)*, no. 33509/04, § 67, ECHR 2009-...).

28. Turning to the case at hand, the Court, observing that the Supreme Court judgment of 4 December 1996 concerned the applicant's alleged entitlement to acquire certain property under preferential conditions, is of the view that the said judgment was determinative for the applicant's civil rights and obligations, within the meaning of Article 6 § 1 of the Convention. Therefore, Article 6 § 1 is applicable in the case.

29. Furthermore, the Court notes that in its judgment of 4 December 1996 the Supreme Court established that the applicant met all the statutory conditions to purchase the property under the preferential privatisation procedure, quashed as unlawful the decision of the Minister of Industry of 26 April 1995 and explicitly instructed the latter to issue an order to sell him the property under section 35(1)(2) of the Privatisation Act (see paragraph 9 above). Thereafter, the Minister of Industry had an obligation to comply with the said judgment by initiating the said preferential privatisation procedure and selling the property to the applicant. However, he failed to do so and the Government failed to provide any submissions and explanations for this lack of compliance by this State body (see paragraphs 10 and 25 above). What is more, by including the property as an asset of the company and selling the latter through the privatisation programme, the State rendered impossible the enforcement of the Supreme Court's judgment of 4 December 1996 (see paragraphs 12-13 and 16 above).

30. This is sufficient to enable the Court to conclude that in the specific circumstances of the present case there has been a violation of the applicant's right to have a final judgment in its favour enforced, as an aspect of its right of access to a court, as guaranteed by Article 6 § 1 of the Convention.

## II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

31. The applicant also complained of a violation of Article 1 of Protocol No. 1 in that the authorities had infringed his statutory right, recognised by the Supreme Court in its judgment of 4 December 1996, to purchase the property under the preferential privatisation procedure of section 35(1)(2) of the Privatisation Act.

Article 1 of Protocol No. 1 reads:

> "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."

32. The Government did not submit observations.

## A. Admissibility

33. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## B. Merits

### *1. The existence of "possessions"*

34. The Court reiterates that an applicant can allege a violation of Article 1 of Protocol No. 1 only in so far as the impugned decisions relate to his "possessions" within the meaning of this provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see *Maltzan and Others v. Germany* (dec.) [GC], nos. 71916/01, 71917/01 and 10260/02, § 74(c), ECHR 2005-V, and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35(c), ECHR 2004-IX).

35. As the present case does not concern any existing possessions of the applicant company, it remains to be examined whether it could have had any "legitimate expectation" of realising a property right.

36. The Court reiterates in this respect that Article 1 of Protocol No. 1 does not guarantee the right to acquire property (see *Slivenko and Others v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II, and *Kopecký*, cited above, § 35(b)). However, the Court notes that in restitution cases it has held that once a Contracting State, having ratified the Convention including Protocol No. 1, enacts legislation providing for the full or partial restoration of property confiscated under a previous regime, such legislation may be regarded as generating a new property right protected by Article 1 of Protocol No. 1 for persons satisfying the requirements for entitlement. The same may apply in respect of arrangements for restitution or compensation established under pre-ratification legislation, if such legislation remained in force after the Contracting State's ratification of Protocol No. 1 (see *Maltzan and Others*, cited above, § 74(d) and *Kopecký*, cited above, § 35(d)).

37. The Court finds it appropriate to apply this standard in the present case, which does not concern restitution of formerly nationalised property but the right to privatise leased State properties under preferential conditions once the person satisfies certain criteria and requirements for the said entitlement.

38. In this respect, the Court observes that domestic law as in force at the time outlined the conditions allowing a lessee of State-owned property to benefit from the preferential procedure under section 35(1)(2) of the Privatisation Act, namely the rent contract concerning the property at issue should have been concluded before 15 October 1993 and be still in force on the date of the respective privatisation proposal (see paragraph 22 above). The Court further notes that in its judgment of 4 December 1996 the Supreme Court concluded that the applicant met all those conditions (see paragraph 9 above). The Court does not see a reason to doubt this conclusion and the Government failed to submit any arguments to the contrary.

39. Furthermore, the Supreme Court in its judgment of 4 December 1996 instructed the Minister of Industry to issue an order to sell the applicant the property under section 35(1)(2) of the Privatisation Act (see paragraph 9 above). Thus, the unequivocal wording of the said judgment left no right of discretion on the part of the Minister of Industry as to the type of compliance expected by the domestic courts. Moreover, under domestic law the Minister of Industry had no latitude as to whether to commence a privatisation procedure under section 35(1) of the Privatisation Act, or as to the conditions of the future transaction, including the price to be paid by the prospective buyer (see paragraph 22 above).

40. In view of the above, the Court concludes that the applicant had a legitimate expectation consisting of the right to purchase the property under the preferential conditions of section 35(1)(2) of the Privatisation Act. Accordingly, the applicant had a “possession” within the meaning of Article 1 of Protocol No. 1.

*2. The existence of interference*

41. The Court finds that the failure of the Minister of Industry to initiate a preferential privatisation procedure following the Supreme Court's judgment of 4 December 1996 in order to sell the property to the applicant represented an interference with the latter's right to peaceful enjoyment of his possessions.

*3. The lawfulness of the interference*

42. The Court reiterates that the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful (see *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII).

43. In the case at hand, after the Supreme Court in its judgment of 4 December 1996 established that the applicant had met all the statutory conditions to purchase the property and explicitly instructed the Minister of Industry to sell him the property under section 35(1)(2) of the Privatisation Act (see paragraph 9 above), the latter had an obligation to comply and to initiate the said procedure by selling the property to the applicant at the preferential price equal to the property's valuation. However, he failed to do so and instead the State sold the property as an asset of the company to third parties (see paragraphs 12-13 and 16 above). The Government did not provide any submissions and explanations for the actions of the State authorities involved (see paragraphs 10 and 32 above).

44. This is sufficient to enable the Court to conclude that in the specific circumstances of the present case the interference with the applicant's right to peaceful enjoyment of his possessions was not in accordance with domestic law and did not meet the requirement of lawfulness under Article 1 of Protocol No. 1.

45. It follows that there has been a breach of that provision.

## III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. Lastly, on 28 September 2005 the applicant complained that the proceedings against the company were unfair, and considered that the domestic courts had not awarded him the real value of the improvements he had made to the property. He argued, in particular, that the improvements had cost BGL 200,352, which in 1992 was equal to 22,000 United States dollars while the domestic courts had awarded him the present-day value of BGN 200.35 (approximately EUR 102).

47. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

## IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

48. 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."

49. The applicant claimed compensation for the moral and pecuniary damage he had allegedly suffered and left it to the Court to determine the amount.

50. However, the Court considers that the question of the application of Article 41 is not ready for decision and reserves it, due regard being had to the possibility that an agreement between the applicant and the respondent Government be reached (Rule 75 § 1 of the Rules of the Court).

## FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints that the authorities failed to comply with a final court judgment and deprived the applicant of the legitimate expectation of acquiring a State-owned property admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

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

4. *Holds* that the question of the application of Article 41 is not ready for decision;
   accordingly,
   (a) *reserves* the said question;

(b) *invites* the Government and the applicant to submit, within two months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
(c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 25 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President