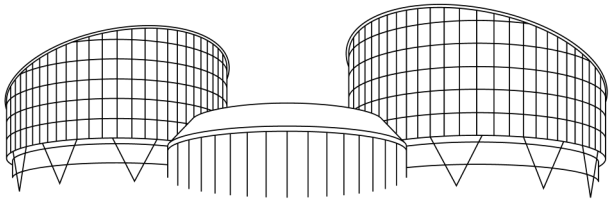

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

1959 · 50 · 2009

FIFTH SECTION

# CASE OF TSONKOVI v. BULGARIA

*(Application no. 27213/04)*

JUDGMENT

STRASBOURG

2 July 2009

*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 Tsonkovi v. Bulgaria,**

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

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre, *judges,*
Pavlina Panova, ad hoc *judge,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 9 June 2009,

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

# PROCEDURE

1. The case originated in an application (no. 27213/04) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Bulgarian nationals, Mrs Asenka Petrova Tsonkova and Mr Geno Petrov Tsonkov ("the applicants"), on 21 July 2004.

2. The applicants were represented by Ms S. Margaritova-Vuchkova, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agents, Mrs S. Atanasova and Mrs R. Nikolova of the Ministry of Justice.

3. The applicants alleged that they had been deprived of their property in violation of Article 1 of Protocol No. 1 and Articles 6, 13 and 14 of the Convention.

4. On 5 March 2008 the President of the Fifth Section 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).

5. Judge Kalaydjieva, the judge elected in respect of Bulgaria, withdrew from sitting in the case (Rule 28 of the Rules of Court). On 30 January 2009 the Government appointed in her stead Ms Pavlina Panova as an ad hoc judge (Article 27 § 2 of the Convention and Rule 29 § 1 of the Rules of Court).

# THE FACTS

## I. THE CIRCUMSTANCES OF THE CASE

6. The applicants were born in 1952 and 1950 respectively and live in Sofia. They are sister and brother.

7. In September 1967 their parents bought from the Sofia municipality a three-room apartment of 108 square metres in the centre of the city, which had become State property by virtue of the nationalisations carried out by the communist regime in Bulgaria after 1947.

8. In 1994 the applicants' parents conveyed the title to the property to the applicants. All four of them – the applicants and their parents – continued to live in the apartment.

9. On 13 March 1998, following the amendments to the Restitution Law whereby the initial one-year time-limit for bringing proceedings under section 7 of that law was renewed (see paragraph 15 below), the heirs of the former, pre-nationalisation, owners of the flat brought such proceedings against the applicants' parents.

10. In March 2002 the applicants' mother died and the applicants joined the proceedings as her heirs. On an unspecified later date their father died too.

11. The proceedings ended by a final judgment of the Supreme Court of Cassation of 26 March 2004. The courts found that the title of the applicants' parents was null and void because documents related to the sale of the apartment had not been signed by the officials in whom the relevant power had been vested but by their deputies.

12. On an unspecified date the former owners of the apartment brought a *rei vindicatio* action against the applicants. Considering that they stood no chance in these proceedings, in November 2004 the applicants vacated the apartment. In December 2005 they bought from the municipality an apartment in the outskirts of Sofia for 24,393 Bulgarian levs (BGN), the equivalent of approximately 12,450 euros (EUR).

13. On 8 July 2004 the applicants applied for compensation bonds. On 10 March 2005 their request was rejected by the regional governor, who found that it had been lodged after the expiry of the statutory two-month time-limit following the final judgment in their case. In April 2005 the applicants lodged an appeal against the governor's order, arguing that his refusal ran contrary to the purpose of the Compensation Law. As of April 2009 the proceedings were still pending at first instance before the Sofia City Court.

## II. RELEVANT BACKGROUND FACTS, DOMESTIC LAW AND PRACTICE

14. The relevant background facts, domestic law and practice have been summarised in the Court's judgment in the case of *Velikovi and Others v. Bulgaria*, nos. 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01, and 194/02, 15 March 2007.

15. 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 time-limit. On 11 March 1998 the Constitutional Court struck down the amendment 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 continued to examine claims brought between the entry into force of the 1997 law renewing the time-limit and the Constitutional Court's judgment of 11 March 1998.

# THE LAW

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

16. The applicants complained under Article 1 of Protocol No. 1 that they had been deprived of their property arbitrarily, through no fault of their own and without adequate compensation. 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."

17. The Government contended that the taking of the applicants' property had not been arbitrary and that the authorities had achieved a fair balance between the general interest and the need to protect the applicants' rights. Furthermore, the applicants were entitled to receive compensation through bonds.

18. The applicants contested these arguments. They affirmed that they had lost the apartment through no fault of their own or of their parents'. They considered that their appeal against the regional governor's refusal to provide them with bonds would most likely be dismissed and that they would not receive anything. They acknowledged that they had not filed a timely request for bonds but pointed out that they had not been notified of the final judgment in their case.

### A. Admissibility

19. 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

20. The Court notes that the present complaint concerns the same legislation and issues as *Velikovi and Others*, cited above.

21. The applicants had to vacate their apartment as a result of the domestic courts' decisions declaring null and void their parents' property title, which they had inherited (see paragraphs 11 and 12 above). The Government did not claim that as a result of these events the applicants could no longer claim to be the owners of the flat at issue. Therefore, there has been an interference with their property rights.

22. The interference was based on the Restitution Law, which pursued in principle an important aim in the public interest, namely to restore justice and respect for the rule of law in the transitional period after the fall of the totalitarian regime in Bulgaria.

23. The Court notes, however, that the action against the applicants' parents was not brought within the initial one-year time-limit after the adoption of the Restitution Law in 1992, but in March 1998, following the legislative amendment of 1997 whereby the time-limit for actions under its section 7 was renewed (see paragraph 15 above).

24. As the Court already found in *Velikovi and Others* (cited above), the measures introduced by section 7 of the Restitution Law – which authorised the challenging of decades-old property titles and the taking of private property as compensation for the nationalisations carried out by the State in the 1940s – could only be seen as proportionate to the legitimate aim of restoring justice where applied as an exceptional transitional step of short duration in the period of social transformation from a totalitarian regime to democracy (ibid., §§ 166, 172, 179 and 189). On this basis the Court accepted that there had been no violation of Article 1 of Protocol No. 1 in some of the cases in which the restitution proceedings against the applicants

had been instituted within the relevant one-year time-limit after the adoption of the Restitution Law (see *Velikovi and Others*, cited above, §§ 194-216 and 229-35 and *Shoilekovi and Others v. Bulgaria* (dec.), nos. 61330/00, 66840/01 and 69155/01, 8 September 2007). It stated, however that the same did not apply in respect of interference with property rights resulting from the renewal of the time-limit in 1997 (see *Velikovi and Others*, cited above, § 189). The Government have not argued that in 1997 there were new particular circumstances justifying a repeated recourse to the far-reaching measures introduced by section 7 of the Restitution Law.

25. Furthermore, it is noteworthy that in its judgment of 11 March 1998 the Bulgarian Constitutional Court also reached the conclusion that the impugned 1997 amendment to the Restitution Law encroached on the principle of legal certainty. However, this judgment did not affect the decisions in the present case as it had no retroactive effect (see paragraph 15 above) and the domestic courts were obliged to examine the action against the applicants' parents.

26. As in *Velikovi and Others*, the Court reaffirms in this case that by authorising a significant departure from the transitory nature of the restitution legislation the authorities violated the principle of legal certainty. Therefore, the interference with the applicants' property rights cannot be seen as falling within the scope of the legitimate aims that the said legislation pursued in principle. In view of this finding, the Court considers that it is not necessary to examine the specific grounds on which the domestic courts nullified the title of the applicants' parents.

27. The Court reiterates that cases like the present one, where the deprivation of property was not part of measures associated with the transition from a totalitarian to democratic society or where it resulted from an excessively extensive application of the Restitution Law in disregard of the principle of legal certainty (see the cases of *Todorova* and *Eneva and Dobrev*, examined in *Velikovi and Others*, §§ 236-49 of the judgment), nothing short of payment reasonably related to the market value of the flat lost could have maintained the requisite fair balance under Article 1 of Protocol No. 1.

28. However, the applicants in the present case have not received the market value of their flat (see paragraphs 12 and 13 above) and the Government have not shown that such compensation was secured to them with sufficient clarity and certainty.

29. There has therefore been a violation of Article 1 of Protocol No. 1.

## II. ALLEGED VIOLATION OF ARTICLES 6, 13 AND 14 OF THE CONVENTION

30. The applicants complained under Article 6 § 1 of the Convention that in their case, in applying a provision which had already been found to

be unconstitutional, the domestic courts had decided arbitrarily. Furthermore, they complained under Article 13 that they had no effective remedy against the alleged violation of Article 1 of Protocol No. 1 and under Article 14 that they had been discriminated against in that the Restitution Law favoured pre-nationalisation owners to the detriment of post-nationalisation ones.

### A. Admissibility

31. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

### B. Merits

32. The Court has examined above the applicants' complaint that they had been the victims of an arbitrary deprivation of property contrary to Article 1 of Protocol No. 1. Therefore, it does not find it necessary to examine separately the complaints under Articles 6 § 1, 13 or 14 of the Convention (see *Velikovi and Others*, cited above, §§ 250-2).

## III APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. 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

34. In respect of damage, the Court considers it appropriate to follow the criteria established in the just satisfaction judgment in the cases examined in *Velikovi and Others* (see *Todorova and Others v. Bulgaria* (just satisfaction) nos. 48380/99 et al., 24 April 2008). The case at hand is similar to the cases of *Todorova* and *Eneva and Dobrev*, examined in *Todorova and Others*, in that the taking of the applicants' property was contrary to the principle of legal certainty. Like in those two cases, the Court finds it appropriate to award separate sums for pecuniary and non-pecuniary damage (see paragraph 11 of *Todorova and Others*, cited above).

*1. Pecuniary damage*

35. The applicants claimed jointly 186,008 euros (EUR) in respect of the value of the apartment they had lost. They submitted two valuation reports by an expert commissioned by them. In the first report, dated April 2004, the expert assessed the value of the apartment at EUR 115,000. In the second report, prepared in May 2008, she considered that the value of the property was EUR 186,008.

36. The Government considered this claim to be excessive.

37. The Court, having regard to the circumstances of the case and to information on its disposal about real-estate prices in Sofia, awards jointly to the applicants EUR 130,000 under this head.

*2. Non-pecuniary damage*

38. The applicants claimed EUR 8,000 each, or EUR 16,000 in total.

39. The Government urged the Court to reject this claim.

40. The Court considers that the applicants have undoubtedly suffered anguish and frustration as a result of the violation of their property rights. Having regard to the circumstances of the case and deciding on an equitable basis, the Court awards EUR 3,000 to each of them (EUR 6,000 in total).

**B. Costs and expenses**

41. The applicants claimed EUR 3,360 for forty-eight hours of legal work by their lawyer, Mrs S. Margaritova-Vuchkova, at an hourly rate of EUR 70, for the proceedings before the Court. They also claimed EUR 280 for four hours of work by Mrs Margaritova-Vuchkova in the domestic proceedings for compensation bonds. In support of these claims they presented a contract for legal representation and a time-sheet. They requested that any sums awarded under this head be paid directly into the bank account of Mrs Margaritova-Vuchkova.

42. The applicants also claimed, in respect of the proceedings before the Court, 500 Bulgarian levs (BGN), the equivalent of EUR 256, already paid by them for legal work by Mrs Margaritova-Vuchkova, and BGN 395 (the equivalent of EUR 203) for postage and translation. They further claimed BGN 628.50 (the equivalent of EUR 322) in expenses incurred in the domestic proceedings concerning the flat. In support of these claims they presented the relevant receipts.

43. The Government considered the claims for legal work by Mrs Margaritova-Vuchkova to be excessive.

44. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

45. In respect of Mrs Margaritova-Vuchkova's fees for the present proceedings, the Court considers that the number of hours of work claimed is excessive. In view thereof, the Court awards EUR 2,000 under this head, to be paid directly into the bank account of Mrs Margaritova-Vuchkova.

46. The Court considers that it is not necessary to award expenses for the domestic proceedings for compensation bonds. It notes that the applicants' request for such bonds was lodged out of time (see paragraph 13 above) and that, consequently, they stand little, if any, chance to succeed in these proceedings.

47. In respect of the remaining costs and expenses claimed by the applicants, the Court, having regard to the information in its possession, finds that they were actually and necessarily incurred and are reasonable as to quantum. It thus awards the whole sum sought, that is, EUR 781 in total.

### C. Default interest

48. 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. *Declares* the application admissible;

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

3. *Holds* that it is not necessary to examine separately the complaints under Articles 6 § 1, 13 and 14 of the Convention;

4. *Holds*

(a) that the respondent State is to pay the applicants jointly, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts to be converted into Bulgarian levs at the rate applicable at the date of settlement:

i. EUR 130,000 (one hundred and thirty thousand euros) in respect of pecuniary damage and EUR 6,000 (six thousand euros) in respect of non-pecuniary damage, plus any tax that may be chargeable;

ii. EUR 2,781 (two thousand seven hundred eighty-one euros), plus any tax that may be chargeable to the applicants, in respect of costs

and expenses, EUR 2,000 of which is to be paid directly into the bank account of the applicants' legal representative;

(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;

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

Done in English, and notified in writing on 2 July 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President